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**INTERSTATE COMMERCE COMMISSION REPORTS**

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**VOLUME XV.**

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**DECISIONS OF THE  
INTERSTATE COMMERCE COMMISSION  
OF THE UNITED STATES**

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**JANUARY, 1909, TO APRIL, 1909**

**WITH TABLE OF COMMODITIES IN VOLS. I TO XV**

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# INTERSTATE COMMERCE COMMISSION.

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# INTERSTATE COMMERCE COMMISSION REPORTS.

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No. 1314.

G. H. PORTER ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY  
ET AL.

---

*Submitted November 14, 1908. Decided January 5, 1909.*

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1. Rate charged by defendants on complainants' shipment of emigrant outfit from Fletcher, Okla., to Bovina, Tex., of 68 cents per 100 pounds found unreasonable to the extent that it exceeds the combination of locals of 41 cents per 100 pounds now applying over the route the shipment moved.
2. Reparation awarded to complainants for excessive amount collected on their shipment of emigrant outfit, plus whatever amount was collected by sale for demurrage or warehousing.
3. Two of the defendants required to keep in force for at least two years the local rate which now results in a combination rate of 41 cents per 100 pounds on emigrant outfits from Fletcher to Bovina.
4. The lawful rate, at the time the shipment moved, via the route it traversed was 62 cents per 100 pounds. This lawful rate was never quoted, assessed, or charged upon the shipment, and all rates that were quoted, assessed, or charged were excessive by reason of exceeding this lawful rate in addition to being excessive because unreasonable.

*S. J. Dodson* for complainants.

*S. H. Madden* and *T. J. Norton* for Pecos & Northern Texas Railway Company.

*William Boyce* and *Spoons, Thompson & Barwise* for Fort Worth & Denver City Railway Company.

*E. B. Peirce* for St. Louis & San Francisco Railroad Company, and St. Louis, San Francisco & Texas Railway Company.

## REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

This case arose out of a shipment of an emigrant outfit consisting of a carload of live stock and household goods from Fletcher, Okla.,



to Bovina, Tex. The car moved from Fletcher January 11, 1907, over the St. Louis & San Francisco Railroad to Quanah, Tex., thence over the Fort Worth & Denver City Railway to Amarillo, Tex., and thence over the Pecos & Northern Texas Railway to its destination at Bovina, Tex., where it arrived January 14, 1907. There was no through rate applicable from Fletcher, Okla., to Bovina, Tex., and while other routings than the one actually taken were possible, the one described was directed by the shipper himself, who, representing himself and cocomplainants as joint owners of the outfit, accompanied and was in charge of the car.

The shipment weighed 24,000 pounds and moved from Fletcher under a live-stock contract of the Frisco System, the essential portions of which are as follows:

One car said to contain 2 horses, 3 hogs, and H. H. goods, and being consigned to G. H. Porter, from Fletcher, Okla., station to Quanah, Tex., station, on the line of the company, and at said last-named station to deliver the same to a carrier, whose line may form a part of the route to Bovina, Tex., herein-after called the place of destination, at the rate of 37 per cwt. \* \* \*

Across the face of the contract was written: "Paid \$74.00 to apply."

The amount of \$74 paid in advance charges was based on the minimum weight, 20,000 pounds per car, applicable to such shipments; the actual weight, 24,000 pounds, was afterwards ascertained. There were two other live-stock contracts issued by the connecting lines beyond Quanah, but neither specifies the rate.

When the car arrived at Bovina the agent at that place demanded varying amounts, each resulting in about \$90 additional, before delivering the goods to the consignee. The consignee, who was also part owner of the goods and in personal charge of the shipment, declined to pay more than \$14.80 additional, or 37 cents per 100 pounds on the 4,000 pounds weight above the minimum already paid, basing his refusal upon his contract with the Frisco System for a rate of 37 cents per 100 pounds. Thereafter the shipper, still refusing to pay the additional freight charges demanded, demurrage and other expenses accrued and, on November 9, 1907, the property was sold to pay freight at the rate of 68 cents per 100 pounds, and other charges, the attorney of the shipper bidding in most of it.

The rates legally applicable to this shipment, emigrant's outfit, January 11-14, 1907, moving over the route it did, were as follows:

*Rates in cents per 100 pounds.*

Fletcher, Okla., to Amarillo, Tex.....	37
Amarillo, Tex., to Bovina, Tex.....	25
Total through rate.....	62

This rate of 62 cents, made up of the combination of the locals, was the only legal rate regardless of contract and irrespective of the various rates actually quoted to the shipper.

There is no question as to the application of the 37-cent rate from Fletcher to Amarillo. Fletcher, Okla., is a local station on the St. Louis & San Francisco Railroad. Item 1420 of Supplement 22 to Southwestern Tariff Committee Tariff I. C. C. No. 466, effective October 22, 1906, provides that Galveston rates shall apply as maxima on shipments from points on the St. Louis & San Francisco Railroad in Indian and Oklahoma territories to points on the Fort Worth & Denver City Railway. The rate on emigrant outfits, carloads, minimum weight 20,000 pounds, from Fletcher, Okla., to Galveston, Tex., as published in the tariff, is 37 cents per 100 pounds, which rate would also apply to Amarillo, Tex., on the Fort Worth & Denver City Railway, as per Item 1420, above noted.

The main difficulty in determining what was the legal rate from point of origin to point of destination, at the time the shipment moved, arises from the needlessly complicated character of Santa Fe System Tariff I. C. C., No. 3654, effective July 23, 1906. This tariff, in Item No. 20, makes a commodity rate on emigrant outfits, released, per classification governing tariff, minimum weight 20,000 pounds, from Amarillo, Tex., to Roswell, N. Mex., and intermediate points, of 25 cents per 100 pounds. Bovina, Tex., is an intermediate point between Amarillo and Roswell, and the terminal points named show this commodity clause to apply to interstate shipments. This rate, making a total rate of 62 cents, for the reasons herein stated, was the one that did in law apply to the shipment and should have been the one charged by the delivering carrier, the Pecos and Northern Texas Railway at Bovina. So far as the record discloses, however, this rate was never quoted by the delivering carrier, nor was it charged at any time, but a different and higher set of rates, aggregating 65, 67, and 68½ cents, was demanded at various times, and finally a rate of 68 cents was charged and collected.

The rates resulting in total rates of 65, 67, and 68½ cents were not explained, but the rate of 68 cents per 100 pounds finally collected was explained as follows:

The same tariff that carries the 25-cent commodity rate in Item No. 20, as set forth above (Santa Fe System Tariff I. C. C. No. 3654), also contains an item which reads:

PECOS & NORTHERN TEXAS RAILWAY.

Item No. 5.—Rates between points on the Pecos & Northern Texas Railway or between Pecos & Northern Texas Railway and Pecos River Railroad \* \* \* will be as per tariffs issued by the railroad commission of Texas, except on 15 I. C. C. Rep.

shipments received from or delivered to connecting lines at Amarillo, Tex., when coming from or destined to points without the state of Texas. On such interstate shipments the following minimum rates will apply, provided through tariffs are not otherwise in effect. Railroad commission of Texas rates will not apply on interstate shipments on either through or local billing.

Governed by the Western Classification as adjusted to Texas interstate traffic.

Over 80 miles—Class D—31 cents.

The station of Bovina is 81 miles from Amarillo, and emigrant outfits such as the complainants' are embraced in Class D, and, therefore, the above interstate distance tariff of 31 cents per 100 pounds, resulting in a total rate of 68 cents per 100 pounds, was by the delivering carrier finally charged, collected, and defended in the record. But such application can not be justified.

While it is true that, as stipulated in Item No. 5, from Fletcher, Okla., to Bovina, Tex., "through tariffs were not otherwise in effect," and while it is true said item prescribes "minimum rates," it is also true that under the law Item No. 5 must give way to Item No. 20.

The act to regulate commerce contemplates not only just and reasonable rates, but plain and intelligible rates. Complication, intricacy, and involution invite, if they do not intend, injustice, inequality, and discrimination. A rate or a tariff published and filed with the Commission can not be held to be legal merely because of that fact; it must also be plain and intelligible. The Commission has emphasized this time and again in as many varying ways as the constantly recurring tariff inconsistencies have necessitated. But as some of these tariffs may still remain in our files, and as it is only by line upon line and precept upon precept, saying here a little and there something more, that tariff experts can be brought to approximately concurrent interpretations of such tariffs, it may be useful to point out again how and why the Commission holds that the rate of 25 cents on emigrant outfits was the only legal rate from Amarillo to Bovina on this shipment and should have been the only rate quoted the shipper or charged or collected on the property.

Taking our phraseology from Tariff Circular No. 15-A, for the law on this subject has not changed though its enunciation may have varied, and applying our rules to these items, Nos. 5 and 20 of Santa Fe Tariff I. C. C., No. 3654, we find that—

1. Under Rule 5 the rate in question was 62 cents, made up of 37 cents from Fletcher to Amarillo and 25 cents from Amarillo to Bovina, for—

If no specific rate from point of origin to destination of a through shipment is provided, and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment.

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2. Under Rule 7 the rate in question was 62 cents, made up of 37 cents from Fletcher to Amarillo and a commodity rate of 25 cents from Amarillo to Bovina, for—

In every instance where a commodity rate is named in a tariff upon a commodity and between specified points such commodity rate is the lawful rate and the only rate that can be used with relation to that traffic between those points, even though a class rate or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic entirely out of the classification and out of the class rates between the points to which such commodity rate applies.

3. Under Rule 10 the rate in question was 62 cents, made up of 37 cents from Fletcher to Amarillo and 25 cents special commodity rate from Amarillo to Bovina, for—

It is permissible for a carrier \* \* \* to issue a distance tariff for use in determining rates on its \* \* \* own lines, but only in cases where no other rates are provided.

As said above, the only lawful rate on this shipment—62 cents per 100 pounds—was never quoted, charged, or collected. The record makes plain, however, that even if the delivering carrier had quoted, assessed, or charged this lawful rate the shipper would have refused payment and have elected to stand on his contract, which, according to his interpretation, entitled him to a through rate from Fletcher, Okla., to Bovina, Tex., of 37 cents per 100 pounds. There was fault and misunderstanding on the part of the carrier as well as fault and misunderstanding on the part of the shipper. The first error, however, was committed by the delivering carrier in failing to quote and charge the only lawful rate on this shipment—62 cents per 100 pounds. All the rates quoted and charged by the delivering carrier were overcharges; the delivering carrier, the Pecos & Northern Texas Railway, demanded more than the lawful rate in each and every charge it made on this shipment. If the carrier had demanded only the lawful rate, the refusal of the shipper to pay more than what he claimed to be the contract rate—37 cents—would have relieved the carrier of blame in the subsequent negotiations. Because of this and because we believe our ruling of February 3, 1908 (Conference Rulings, Bulletin No. 1), announced merely what the law had always been, we find that all demurrage and other charges accrued and collected after the shipment reached Bovina were improperly assessed and should be refunded to the shipper. We repeat the ruling:

When the delivering carrier demands more than the lawful rate, the consignee is released from the obligation to pay demurrage charges accruing during the pendency of the dispute as to the lawful rate.

This Commission has jurisdiction whenever the unreasonableness of the rate is in issue, as it is here. The distance the shipment was hauled was 337 miles, made up of 114 miles Fletcher to Quanah, 142 miles Quanah to Amarillo, and 81 miles Amarillo to Bovina. The

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rate charged and collected by sale, 68 cents per 100 pounds, is equal to \$13.60 per ton, or a trifle over 4 cents per ton per mile (\$0.040356); the legal rate, 62 cents per 100 pounds, is equal to \$12.40 per ton, or a little over 3½ cents per ton-mile (\$0.0368). Since that time a rate for emigrant outfits over the route this shipment moved has been established by cancellation of the interstate local rates of the Santa Fe System and the application of the local rates of the railroad commission of Texas, resulting in a rate of 41 cents per 100 pounds, or \$8.20 per ton, or something less than 2½ cents per ton per mile (\$0.024332).

The rate of 41 cents per 100 pounds on emigrant outfits from Fletcher, Okla., to Bovina, Tex., is reached at the present time by basing on Quanah, 18 cents, and applying the joint rates for distances from 220 to 225 miles on Class D, 23 cents, prescribed by the railroad commission of Texas (R. C. of T. Tariff of Class Rates No. 3), and adopted by the Pecos & Northern Texas Railway. The joint distance from Quanah to Bovina is 223 miles, made up of 142 miles on the Fort Worth & Denver City Railway and 81 miles on the Pecos & Northern Texas Railway. Santa Fe System Tariff No. 5645-C, I. C. C. No. 3654, amendment No. 39, page 5, effective September 15, 1908, says:

Item No. 421 cancels Items 5, 6, 7, and 8. Effective May 7, 1908, in amendment No. 34 to I. C. C. No. 3654. \* \* \*

NOTE.—Will not apply on household goods and emigrant outfits, carloads or less than carloads. Texas commission local rates apply per R. C. of Texas Tariff No. 3, S. F. System No. 5929-B.

Upon full consideration of all the facts in this case our conclusions are: That the rate charged and collected by sale of the property, on the shipment in question, 68 cents per 100 pounds, was unjust, unreasonable, and excessive to the extent that it exceeded the combination of locals, which results in a rate of 41 cents per 100 pounds afterwards applicable over the route this shipment moved; that the complainants should have reparation from the defendants, the St. Louis & San Francisco Railroad Company, the St. Louis, San Francisco & Texas Railway Company, the Fort Worth & Denver City Railway Company, and the Pecos & Northern Texas Railway Company, for the excessive amount charged and collected—that is, for the difference between \$163.20 collected by sale and \$98.40, which would have been reasonable, or for the sum of \$64.80, plus whatever amount was charged and collected by sale for demurrage or warehousing; and that the defendants, the Pecos & Northern Texas Railway Company and the Fort Worth & Denver City Railway Company be ordered to keep in force the application to interstate traffic of the local rate which now results in a combination of 41 cents on emigrant outfits, Fletcher, Okla., to Bovina, Tex., for at least two years from the date of this report.

An order in accordance with these conclusions will be issued.

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No. 1434.  
RENTZ BROTHERS, INCORPORATED,  
v.  
CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY ET AL.

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*Submitted July 24, 1908. Decided January 5, 1909.*

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Defendants having conceded relief prayed for, making a classification for jewelers' sweepings in Western Classification, case is dismissed.

*George M. Bleecker* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*J. D. Armstrong* for Great Northern Railway Company.

*Alfred H. Bright* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

The complaint, filed February 20, 1908, alleged that the defendants had refused to furnish facilities for the transportation of bullion or jewelers' sweepings; that no just and reasonable rate for such property had been provided; that the defendants had denied the complainant a through rate from points in the state of Minnesota to points in the state of Rhode Island; and that such refusals constituted discrimination under the act.

The answers of the defendants practically admitted these allegations and attempted justification of the discrimination on the ground that the true value of the commodity can not even approximately be ascertained.

The testimony disclosed that the commodity was provided for in nearly all classifications excepting the Western Classification, and that formerly that classification had provided for it. The omission was made deliberately because of the difficulty in ascertaining the value

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of the articles shipped and the danger of exorbitant claims in case of loss.

After the hearing on June 15, 1908, it was understood by the parties to this case that the defendants would satisfy the complaint by including jewelers' sweepings in the Western Classification. This promise of the defendants was fulfilled as follows:

Western Classification No. 45, I. C. C. No. 3, effective November 1, 1908, jewelers' sweepings and tailings in water-tight barrels, value not exceeding \$50 per barrel, and so declared by shipper on shipping ticket or bill of lading, at first class; value exceeding \$50 and not exceeding \$200 per barrel, and so declared by shipper on shipping ticket or bill of lading, at double first class; value exceeding \$200 per barrel, or value not stated, not taken.

Thereupon, the complainant asked that the case be dismissed. It is so ordered.

15 I. C. C. Rep.

No. 1511.  
NAYLOR & COMPANY  
v.  
LEHIGH VALLEY RAILROAD COMPANY ET AL.

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*Submitted November 25, 1908. Decided January 5, 1909.*

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Defendants' rate on pyrites cinder should not exceed their rate on iron ore from Buffalo, N. Y., to points in Pennsylvania and New Jersey. Reparation denied.

*Douglas, Leckie & Thompson* for complainant.

*Charles Heebner and J. D. Campbell* for Philadelphia & Reading Railway Company.

*Henry W. Clark* for Lehigh Valley Railroad Company.

*Henry Wolf Bikle* for Pennsylvania Railroad Company.

*Harris, Havens, Beach & Harris* for Buffalo, Rochester & Pittsburg Railway Company.

*Edgar H. Boles* for New York Central & Hudson River Railroad Company.

*J. L. Seager* for Delaware, Lackawanna & Western Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint involves the reasonableness of the rate of \$2 per gross ton on pyrites cinder over the lines of defendant companies from Buffalo, N. Y., to points in the states of Pennsylvania and New Jersey.

Iron pyrites is a high-grade ore containing a large percentage of both sulphur and metallic iron. It is imported, chiefly from Spain, by fertilizer and chemical works located in this country. At these works this ore is burned in specially constructed furnaces, and from the arising sulphuric fumes sulphuric acid is obtained. The resultant product, pyrites cinder, contains approximately 60 per cent of iron and a small residue of sulphur, usually from 1 to 3 per cent, the amount of residue determining the value of cinder to the iron manufacturer, as the presence of sulphur lessens the value of iron ore. This pyrites cinder, the rate upon which complainants claim to be excessive, is shipped to blasting furnaces in Pennsylvania and New Jersey, where the iron is subtracted and used in the manufacture of



pig iron. It is alleged by the complainants that pyrites cinder being a low-grade commodity, valued at about \$1 per gross ton at Buffalo, is unable to move at the \$2 per ton rate; the output at the chemical works at Buffalo being from 20,000 to 25,000 tons per year, only one-quarter of which is sold. Pyrites cinder is also produced at chemical works at Bayonne, N. J., where it is valued at \$2 per ton, the difference between the value at Buffalo and the value at Bayonne being, it is claimed, accounted for because of the difference in freight rate to points of destination in New Jersey and Pennsylvania. This fact is emphasized by complainants that the iron pyrites bears a rate from New York, Philadelphia, and Baltimore to Buffalo of but \$1.40 per ton, while the pyrites cinder for a return haul of but a part of the distance bears a rate of \$2 per ton, the cheaper commodity for a shorter haul being charged a greater amount than the higher grade commodity for a longer haul.

The contention of the defendants by way of answer is that pyrites cinder should take a higher rate than iron ore between the same points, owing to the longer time consumed in loading the former than the latter, and because iron ore is consumed in greater quantities than pyrites cinder. It appears that it does in fact take much less time to load iron ore than pyrites cinder, and a carload of iron ore is slightly heavier than a load of pyrites cinder. The rate on iron ore is \$1.45 per ton to points of destination carrying a \$2 rate on pyrites cinder.

We are of the opinion that the rate on pyrites cinder should not exceed the rate on iron ore from Buffalo, and an order will be made accordingly. Reparation will not be awarded.

15 I. C. C. Rep.

No. 1567.  
COMMERCIAL COAL COMPANY  
v.  
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

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*Submitted November 16, 1908. Decided January 5, 1909.*

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1. Defendants' rate of \$1.90 per net ton for the transportation of bituminous coal from Grafton, W. Va., via Willow Creek, Ind., to Kalamazoo, Mich., a distance of 640 miles, not found unreasonable, though defendants subsequently for competitive reasons reduced the rate to \$1.85 per ton; as carriers may voluntarily make rates lower than they may lawfully be required to make.
2. The voluntary reduction of a rate does not carry with it a conclusive presumption that the prior rate was unreasonable.
3. A carrier with a long route is not obliged as a matter of law to meet the rate of a short-line competitor; neither is a carrier via a long route obliged as a matter of law to reduce its rate because its short-line competitor reduces a rate which has been the same via both routes. Complaint dismissed and reparation denied.

*W. N. Krug* for complainant.

*O. E. Butterfield* and *W. A. Parker* for defendants.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

The Commercial Coal Company is a trade name under which W. N. Krug buys, sells, and ships bituminous coal, and his principal place of business is at Detroit, Mich. Complainant alleges that during the month of November, 1906, 25 cars of bituminous coal were shipped for complainant's account by the Davis Coal Mining Company from Grafton, W. Va., to the Kalamazoo Gas Company, at Kalamazoo, Mich., via the lines of the Baltimore & Ohio Railroad Company and the Michigan Central Railroad Company, on which a rate of \$1.90 per net ton, the lawful rate via the route over which the shipments moved was collected. Complainant alleges that this rate was unjust and unreasonable, and that it should not have exceeded \$1.85 per

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net ton. Reparation is asked at the rate of 5 cents per net ton, amounting to \$61.14. Defendants admit moving the shipments at the time specified, admit the weights of same and the collection of charges as alleged, but deny that the rate charged was unjust or unreasonable.

For several years prior to June 25, 1906, the rate on bituminous coal in carloads from Grafton, W. Va., to Kalamazoo, Mich., by all the routes authorized by the tariff which contained the joint through rates in connection with the Baltimore & Ohio Railroad, was \$1.90 per net ton. The distances via the routes over which this rate applied are approximately as follows: Baltimore & Ohio Railroad to Avilla, Ind., and Grand Rapids & Indiana Railroad to Kalamazoo, 500 miles; Baltimore & Ohio Railroad to Sandusky and Lake Shore & Michigan Southern Railroad to Kalamazoo, 530 miles; Baltimore & Ohio Railroad to Toledo and Pere Marquette Railroad and the Chicago, Kalamazoo & Saginaw Railroad to Kalamazoo, 550 miles; Baltimore & Ohio Railroad to Sherwood, Ohio, Cincinnati Northern Railway to Jackson, and Michigan Central Railroad to Kalamazoo, 500 miles; Baltimore & Ohio Railroad to Willow Creek, Ind., and Michigan Central Railroad to Kalamazoo, 640 miles.

In June and July, 1906, this rate was reduced to \$1.85 per net ton via all of the above-named routes except those via Willow Creek, Ind., and Sherwood, Ohio. On January 11, 1907, the \$1.85 rate was made to apply over these other two routes. The shipments in question moved over the Baltimore & Ohio and Michigan Central via Willow Creek.

The Baltimore & Ohio Railroad Company admits that it makes the rates on coal from Grafton, W. Va., to Kalamazoo, Mich., via all the lines, and that it was responsible for the reduction which was made in the rates. The reduction was brought about by the competitive influence of what is termed "ex river coal" affecting all-rail rates to interior points in Ohio and northern Indiana. Ex river coal is coal that is brought down the Ohio River in barges to Cincinnati and other points in that vicinity, where it is elevated and carried by rail to interior points as far from Cincinnati as the rail-and-river rates will permit. It is admitted by defendants that the competitive influence of ex river coal does not affect the all-rail rates from Grafton to Kalamazoo, but only rates as far north as Peru, Ind. It is stated that the rate to Kalamazoo was in fact reduced in order to maintain the same relative all-rail rate adjustment that formerly existed between Peru and points like Kalamazoo. It is also admitted that the circumstances and conditions surrounding the transportation to Kalamazoo both prior to and after the reduction of the rate were the same.

The Baltimore & Ohio Railroad Company explains its failure to reduce the rate via Willow Creek at the same time it reduced the rate via the other routes on the ground that it doubted that the \$1.85 rate would be remunerative via that route. The distance is 640 miles, and the \$1.90 rate produced a fraction less than 3 mills per ton per mile. It contends that it finally reduced the rate in order to put its shippers and consignees on equality via all routes, but that the \$1.90 rate as applied to the Willow Creek route was never an unjust and unreasonable rate. The route via Sherwood is one of the shortest, and no reason is given why the rate via that route was not reduced with the others. The question of divisions with the Michigan Central might have had some part in the delay.

At the time the defendant Baltimore & Ohio Railroad Company reduced the rates from West Virginia producing points to Kalamazoo via all routes except the ones via Willow Creek and Sherwood it also reduced its rates from all Ohio producing points to Kalamazoo over all routes. This, however, is explained by the fact that other carriers serving other producing points in Ohio reduced their rates to Kalamazoo and other points, including Battle Creek and Nichols, and created a competitive condition which the Baltimore & Ohio Railroad Company was obliged to meet.

Complainant testified that it had been his custom to give his business to the Michigan Central Railroad, although he had shipped at the same time via the Grand Rapids & Indiana connection because of the inability of the Michigan Central to furnish him cars. He said: "I am a Michigan Central man, as it were, and I send everything via the Michigan Central." He also testified that the plant of the consignee of these shipments is located on the Grand Rapids & Indiana or Lake Shore & Michigan Southern tracks in Kalamazoo. His desire to favor the Michigan Central Railroad prompted him to request that these shipments be routed that way. He states that he did not specify or request any particular intermediate routing. The original bills of lading were not presented at the hearing because complainant claimed they had been sent to the Michigan Central Railroad Company with claim for alleged overcharge. The papers in the claim have since been submitted to us, but no bills of lading are with them. Only two stubs of shipping receipts issued to the parties from whom complainant purchased the coal appear in these papers. They show routing for only two cars, and in each instance on one place in the stub is entered routing via the Toledo, St. Louis & Western to Toledo and Michigan Central and each stub in another place gives directions "via M. C." Apparently no route via the Toledo, St. Louis & Western road was authorized by the tariff. Two routes were available via the Michigan Central, one via Willow Creek,

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and one via Sherwood. Defendant complied with complainant's routing instructions for these two cars as nearly as was possible under the tariff. As to the remaining shipments it must be presumed from the record that the defendant regarded complainant's instructions as to routing. The claim papers contain copies of the Baltimore & Ohio billing which simply show that the shipments moved via Willow Creek.

No intermediate routing having been directed and the rate being the same via the two Michigan Central routes, defendant elected to send the shipments via Willow Creek instead of via Sherwood. Complainant offered no testimony, and had none to offer, as to the reasonableness of the rate charged, other than to say that prior to the time of the shipments in question the rates had always been the same over all the routes and that shortly after that time the carriers voluntarily established the same rate via all the routes into Kalamazoo. The lower rate had been in effect via the other routes for some five months. The lawful rate via the route over which the shipments moved was collected, and we are unable to find that the rate of \$1.90 per ton over that route, 640 miles, and over the lines of two carriers, was unjust or unreasonable. The carriers saw fit later, for competitive reasons, to reduce it to \$1.85 per ton, but a carrier may voluntarily make rates lower than it might lawfully be required to make. It is true that complainant's shipments might have been moved over a much shorter route at the \$1.90 rate, but that would have been of no advantage to him at that time. We can not undertake to assume what might or would have been our conclusion if these shipments had so moved and this complaint were as to the unreasonableness of the \$1.90 rate applied to that route. In that event the record would, no doubt, have been different. The voluntary reduction of a rate does not carry with it a conclusive presumption that the prior rate was unjust or unreasonable. A carrier with a long route is not obliged as a matter of law to meet the rate of a short-line competitor. Neither is a carrier via a long route obliged as a matter of law to reduce its rate because its short-line competitor reduces a rate which has been the same via both routes.

The complaint should be dismissed, and an order will be entered accordingly.

15 I. C. C. Rep.

No. 1128.  
**AMERICAN BANKERS' ASSOCIATION**  
*v.*  
**AMERICAN EXPRESS COMPANY ET AL.**

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*Submitted November 11, 1908. Decided January 5, 1909.*

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1. Complainants alleged that defendant express companies, by dealing in domestic and foreign exchange, money orders, letters of credit, travelers' checks and drafts, and foreign money, trespass upon the business of bankers, and by the unfair use and exercise of their business as common carriers violate the act to regulate commerce by unjust discrimination against complainants. Defendants averred that they are subject to the act only as forwarders of goods by express and not in respect to any other kind of business carried on by them, and that their financial business has no relation to their business as common carriers and does not constitute interstate or foreign commerce; *Held*, upon defendants' motion to dismiss complaint and complainants' request for subpoena duces tecum, that as there may be some question of unjust discrimination involved in the matter, the motion to dismiss the complaint is denied; but as the information sought by complainants through the issuance of subpoena duces tecum does not at this time seem to be necessary to a showing of unjust discrimination in the transportation of money, it does not appear that it would be proper to impose the large expense that preparation of the information would involve. The request for such subpoena is also denied.
2. There can be no doubt as to the jurisdiction of the Commission of any question of discrimination connected with the service of the express companies as carriers; but even if unjust and undue discrimination, free from criminal act, were shown to exist in their practices, it is clearly the duty of this Commission to go no further in destruction or disturbance of the business of the carrier, or in depriving the public of conveniences and facilities of value to it, than is necessary in order to remove the discrimination to the extent that it is unjust or undue.
3. The extent, if any, to which defendants transport money for themselves for the purpose of settling balances in the carrying on of their financial operations has not been shown. The relationship of the cost of this service and of the charges made therefor has not been presented. There may or may not be some question of unjust discrimination involved therein, and complainants should be given an opportunity to present their proofs in support of this alleged discrimination and the defendants should have an opportunity to answer same. The Commission shall

therefore, unless advised by complainants of their desire to dismiss this proceeding, set it down in due time for hearing of further testimony along the lines herein indicated.

*John S. Miller and George Packard* for complainants.

*T. B. Harrison, jr., John G. Milburn, and C. A. de Gersdorff* for Adams and American Express companies.

*Stewart & Shearer* for Southern Express Company.

*Charles W. Stockton and James L. Minnis* for Wells, Fargo & Company and Pacific Express Company.

*Frank H. Platt and George W. Field* for United States Express Company.

REPORT OF THE COMMISSION ON DEFENDANTS' MOTION TO DISMISS  
COMPLAINT AND COMPLAINANTS' REQUEST FOR SUBPENA DUCES  
TECUM.

*CLARK, Commissioner:*

The important allegations contained in the complaint in this case are:

(a) That the complainants have always been engaged in the business of buying and selling domestic and foreign exchange, letters of credit, drafts, foreign money, etc., all of which involve the necessity of making certain shipments of money;

(b) That defendants are common carriers, subject to the act to regulate commerce, and that, as such, complainants employ defendants to ship money and valuable papers for them;

(c) That defendants have for years engaged in dealing in domestic and foreign exchange, money orders, letters of credit, travelers' checks and drafts, and foreign money, and that in so doing they trespass upon the business of the bankers;

(d) That the defendants, engaged as common carriers in shipping money for others, including complainants, are able to and do ship currency for themselves, for the purpose of meeting balances in their dealings, at a cost to themselves lower than the rates and charges demanded and collected from complainants, and that defendants unjustly and unfairly compete with complainants in the issuance of and dealing in exchange;

(e) That the price of exchange is largely controlled by the cost of shipping money with which to meet the obligations incurred, and that as the cost of shipping money is regulated and controlled by defendants, said defendants have acquired business legitimately belonging to the banks;

(f) That defendants, because of their use of their facilities as carriers, unfairly discriminate against complainants and give to themselves and those with whom they deal in the sale and purchase of

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exchange unreasonable preference and advantage, to the prejudice and disadvantage of complainants; and

(g) That defendants are able to conduct and carry on their financial business of dealing in exchange, drafts, letters of credit, foreign money, etc., only because of and by the unjust and unfair use and exercise of their powers, facilities, and business as common carriers.

Complainants pray for an order "commanding the defendants to cease and desist from said violations of the act to regulate commerce," which, from their complaint and argument, is understood to be a request for an order commanding the defendants to discontinue the business of issuing money orders, letters of credit, travelers' checks and drafts, purchase of foreign exchange, purchase and sale of foreign money, etc.

The answer of the American Express Company, which may for the present purpose be taken as representative of the answers of defendants, generally denies the allegations of unjust or undue practices or discrimination. It denies that the business of complainants involves or necessitates the shipment of money over the lines of defendants with which to meet payment of exchange and drafts dealt in by complainants, except in exceptional instances, and avers that the great mass of such transactions are effected and consummated through settlements of balances between banks and localities without any actual payment or shipment of money.

It avers that it accepts and forwards shipments of money and securities for all persons without discrimination and without knowledge concerning the purposes or intentions of the persons making such shipments.

Defendant denies that it is engaged in the business of dealing in exchange, but admits that it issues money orders, letters of credit, travelers' checks and drafts, and that it purchases foreign exchange. It denies that complainants, or that banks or bankers in general, have any exclusive right or privilege of issuing such documents; asserts that such business is open to all persons who desire to engage therein and who have the requisite capital and facilities therefor; avers that defendant was engaged in such issue and sale of money orders and travelers' checks for many years before banks or bankers adopted the general custom of issuing such documents, and denies that in engaging in this business defendant has departed from the purposes for which it was organized or from any of its established duties or proper functions.

Defendant admits that it buys and sells foreign money and transfers money by cable and by mail; that it conducts a business involving many financial operations; avers that it has the lawful right and authority to do all of these things, and denies that in so doing



it encroaches or has encroached on any recognized business of complainants.

It avers that it is an unincorporated, voluntary association of individuals, or a partnership formed by articles of association under the common-law right of contract; that it has so existed since 1850, and that its articles have always authorized it to carry on the business mentioned in the complaint. It admits that it is able to successfully compete with banks and bankers in the sale of money orders, checks, drafts, and other forms of exchange, but alleges that this results from the facilities and service furnished.

Defendant contends that it is subject to the provisions of the act to regulate commerce only in respect to its business as a common carrier or forwarder of goods by express, and not in respect to any other kind of business carried on by it. It alleges that the right to carry on the financial business mentioned in the complaint is a property right of which it can not be deprived without due process of law, and that the relief sought by complainants herein would deprive defendant of its liberty and property without due process of law.

It alleges that its financial business has no relation to its business as a common carrier or forwarder, and that, therefore, it does not constitute interstate or foreign commerce.

The case was set for hearing, and considerable testimony of complainants was taken. Defendants filed a motion to dismiss the complaint, and complainants filed a request for a subpoena duces tecum, requiring defendants to furnish voluminous information with respect to their financial business and transactions, which would necessitate turning defendants' books over to complainants or the preparation by defendants at great expense of a large number of voluminous statements. Postponement of hearing was had, and later the Commission heard argument on these motions, most of which was directed to the motion to dismiss. Briefs and reply briefs have been filed, and the case now comes up on the motion to dismiss the complaint and the request for subpoena duces tecum.

In addition to the allegations and admissions made in the complaint and answers and in the briefs filed and testimony so far taken, it is a matter of common knowledge that the express companies do issue money orders, letters of credit, etc., and that banks issue drafts and letters of credit, and that in such business of credit or promises to pay money on demand they necessarily come more or less in competition with each other.

The extent to which money must be shipped to adjust balances necessarily depends upon the frequency with which balances are adjusted and upon the extent to which the transactions involve entry of credits at both ends. It might be possible to transact a business aggregating a very large sum and, at the end of the year, to balance

the account by the forwarding of a very small amount of money. Complainants allege that the cost of exchange is regulated by the express companies' charges for the transfer of the money, and that the price of exchange can not go above such charges. It is, however, shown that money can be transmitted by registered mail and be insured at a less cost than to transport it by express; but, as between two points, say Chicago and New York, it is obvious that the price of exchange must be limited largely by the cost of forwarding the money, and it is equally obvious that the principal item in the cost of transporting money is the risk involved or the cost of insuring the safe delivery of the shipment.

Complainants argue that the principles underlying the case of *New York, New Haven & Hartford R. R. Co. v. Interstate Commerce Commission*, 200 U. S., 390, commonly called the Chesapeake & Ohio case, must control in this matter.

In that case the court decided that the carrier might not lawfully sell coal at a cost which was less than the cost of the coal at the mines, plus the carrier's lawful tariff charge for its transportation; and in order to apply the principles of that case to the one now in question it must first be decided that money is a commodity subject to the regulations of the statutory and common law applicable to the purchase and sale and transportation of other commodities.

Complainants invoke the application of some decisions in the Illinois courts in which it was held to be unlawful and unjustly discriminatory for the owner or operator of a public grain elevator to also handle through that elevator grain owned by himself and to mix it with the grain of persons employing him as a warehouseman. See *Central Elevator Company v. People*, 174 Ill., 206, and *Hannah v. People*, 198 Ill., 88.

Again, to establish a close analogy between those cases and the one now considered it must be determined that money is a commodity subject to the provisions and principles of the statutory and common law which apply to other commodities, such as coal and grain. In the Chesapeake & Ohio case the carrier's practice amounted to a device by which its lawful tariff rates were departed from. In the Elevator cases the elevator owners and operators mixed their own grain with that of their customers, and the temptation and opportunity to so gain an improper advantage are obvious, when the opportunity to buy poor grain for themselves and grade it up to a higher value at the expense of their customers is considered. The value of a bushel of grain can be materially changed by grading it or by giving it commercial treatment. It is difficult to see how the value of a dollar can be so changed.

In the case of the warehousemen and in complainants' brief, reference is made to many cases which suggest the rule that a trustee is  
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disqualified to act by the intervention of a personal interest in the performance of his duties as trustee. But in the transportation of money, or in the sale of money orders, is the express company a trustee if it loses or fails to deliver the money intrusted to it for transportation? Is it not liable as a common carrier for the loss? And in the sale of a money order is it not liable just as it would be on any other promissory note or paper? It accepts the customer's money and issues the order, which is a promise to pay, or to transfer and pay, an equivalent amount of money.

In the *Chesapeake & Ohio* case and in the case *Grain Rates of Chicago Great Western Railway Company*, 7 I. C. C. Rep., 38, the question of purchase and sale of a commodity which must be transported was involved. In this case we have the question of the purchase and sale of commercial paper and of credits, which do not necessarily involve the transportation of money or any other commodity. A man in New York may purchase from an express company or from a bank a money order or draft for \$20, payable in Chicago, and a man in Chicago may purchase a money order or a draft for an equal amount, payable in New York, and both transactions can be completed without the transportation of any money.

In the *Chesapeake & Ohio* case the carrier was enjoined from so dealing in the purchase and sale of coal as to have the effect of its accepting less than its tariff rates for the transportation of that coal. The carrier was not enjoined or prohibited from conducting its business as a transportation company or from dealing in coal which it might own.

The Congress incorporated in the amended act the well-known "commodities clause," prohibiting railroads from having any interest or ownership in any commodity transported by them, excepting lumber and its products. It is argued on the one hand that the language of this amendment excludes express companies from its terms, and on the other hand that the underlying purposes of the law operate to include express companies in the provisions of that amendment; but that portion of the act has, by the United States circuit court, been declared unconstitutional, and in the opinion in which that decision was handed down attention is called to the difference between a regulation of the terms under which a railroad company might transport its coal and a declaration that such coal could not be carried at all. Manifestly it would be improper for us to undertake, in a close or far-reaching question, to apply a clause which, by such court, has been so declared unconstitutional. It is not at all clear that at the time this provision was enacted by the Congress there existed the same reasons for including the express companies which appeared for including railroad companies. The thought suggests itself that a

sleeping-car company, which by the terms of the act is subject to its provisions, might in some way or at some time or in some degree come in competition with certain hotels and lodging houses; but could it be therefore adjudged guilty of unlawful discrimination, or could it therefore be prohibited from continuing its business as a sleeping-car company?

Considerable stress is laid upon the fact that some of the defendants are joint-stock companies; that others are corporations which, by their charters, have the right to engage in the business complained of; and it is intimated that those facts have some important bearing upon the questions here considered. There does not seem to be room for much doubt on that score. The act to regulate commerce applies to common carriers and provides no distinction between those that are operated as individual properties, partnerships, or corporations. It uses in several places the words "that any common carrier, subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof."

The power of the Federal Government to regulate interstate commerce is too well established to be open to question, and all local regulations, private contracts, terms of franchises, or charters must give way when they conflict with Federal regulation duly prescribed by the Congress. There can be no doubt as to the jurisdiction of the Commission of any question of discrimination connected with the service of the express companies as carriers; but even if unjust and undue discrimination, free from criminal act, were shown to exist in their practices, it is clearly the duty of this Commission to go no further in destruction or disturbance of the business of the carrier, or in depriving the public of conveniences and facilities of value to it, than is necessary in order to remove the discrimination to the extent that it is unjust or undue.

If, as alleged, these defendants are guilty of unjust and undue discrimination in their own favor and to the prejudice of complainants because they are able to and do ship their own money for settlement of balances at less cost than the price charged complainants for the same service, it would be possible to remove that discrimination without at all interfering with the rights or practices of the defendants in the issuance of money orders, letters of credit, etc., or in the purchase of foreign exchange or the purchase and sale of foreign money. If the American Express Company, for instance, were to continue its financial operations as at present and whenever it became necessary to ship money for the settlement of balances or to provide for exchange issued, it should make such shipment over the line of another express company at regular tariff rates, the basis of the alleged discrimination would apparently be removed.

The same result would follow if the express company should make shipments of balances by United States mail. If the express company's charges for transportation of money covered only the actual cost of that service, it would be no discrimination for it to ship its own money. It would be possible for the express company to conduct its financial operations without actually shipping any of its own money for the purpose of settling balances, as it might settle them by the purchase of exchange, paying the market price therefor.

Complainants show that in some instances the express companies' agents do not have on hand funds with which to cash money orders that may be presented for payment, and allege that therefore the banks, for accommodation of their customers, are obliged to cash these orders. They allege that the express companies require their agents to remit to certain central places at certain periods the moneys of the company which are in their hands, and that the banks cashing the express companies' money orders are in turn obliged to ship in currency with which to replace that so paid out.

The express companies' money orders are accepted in a great many places and by a great many banks and they are frequently used by the banks as exchange, but they have behind them nothing but the credit of the issuing express company. No bank, and no person, is obliged to accept them either with or without discount, and if they were refused by banks the obligation would be upon the express companies to actually cash them themselves.

Emphasis is laid upon the fact that defendants establish offices in hotels, drug stores, and other places in the cities, and keep their offices open longer hours than is customary with the banks, and that thereby they secure business which otherwise the banks would secure. In reply, defendants argue that these facilities are of great value and convenience to the public, and that they maintain many offices where money orders are issued in places where there are no banks. The questions of where the office of a carrier shall be located, or what hours that office shall be kept open, hardly seem to be within the jurisdiction of this Commission, unless it were shown that an office was not kept open sufficiently long to reasonably accommodate the public in its demand upon the services of the express company as a carrier. It is also noted as a matter of common knowledge that banks that are kept open continuously day and night have been established in some of the cities. The practice of issuing money orders has been followed by express companies for many years. There is no disputing the fact that they do furnish to the public a very convenient, cheap, and satisfactory service in this regard. They have built up a strong and world-wide credit; and even if it were within the power of this Commission to prohibit them from continuing in these practices that power would not be exercised to the extent of

imposing upon the public the great inconvenience that would follow such prohibition unless it were clearly shown that in no other way could the requirements of the law be complied with.

Defendants' briefs discuss questions of law as to the extent of the power of Congress in regulating interstate commerce, the extent to which the terms of the law apply to the business of defendants, and what constitutes interstate commerce, with especial reference to transportation or transmittal of contracts, insurance policies, and commercial paper. They allege that their rates for money orders are uniform and available, without discrimination, to all persons, including the banks. They call attention to the fact that their charges for money orders are the same as those of the United States for post-office orders. They argue that their money-order business is not exactly competitive with the commercial exchange business of the banks. They point out in the record in this case that banks have recently adopted a species of money order, but that they have confined payment of same to one specified place, whereas the express companies' money orders are payable at many places. They argue that even if their business were directly competitive with the exchange business of the banks public policy and the "greatest good to the greatest number" demand a maintenance of this competition for the benefit of the public; that the banks on the one hand and the express companies on the other constitute two public trustees offering their services to the public; that complainants are not seeking to maintain any rights of the public that are infringed by the express companies, and that to grant the prayer of the complainants would be to further the efforts of complainants to secure for themselves a substantial monopoly of the business of exchange.

In our report of May 9, 1908, in response to a resolution of the Senate of March 2, 1907, directing an investigation into the subject of alleged purchase and sale of commodities by express companies, it was said:

There can be no doubt that many instances occur where jobbers of and whole-sale dealers in these products find competition from shipments to express agents and to local dealers upon orders secured through such agents, but there is also no doubt that, with the constant introduction of new and comparatively small fields of production, the jobbers do not and can not buy all the products offered for sale. Express companies go wherever railroads are built, and operate also upon stage lines; they serve vast territories, and are able to supply through their order and commission departments the wants of buyers and sellers in every part of the country. The interests of the jobber are not alone to be considered. The great population which in recent years has flowed in a steady stream onto the plains and into the mines and forests of the domain west of the Mississippi demands that the productive resources of that region shall be developed and that remote communities shall be served with commodities which they need. So far as producers in isolated localities and small communities in outlying places are concerned, express companies furnish prac-

tically the only means of sale and supply. The jobber who buys in carload lots overlooks the producer in remote places who raises only a few crates of grapes or bushels of fruit, and the local dealer a long distance from jobbing centers finds that he can not get the limited supply his community requires from any other source than through express companies. As a rule, the jobbers of and wholesale dealers in perishable food products do a large and profitable business under existing conditions, and instances where their business is seriously interfered with by products sold through express agents are the exception and not the rule.

We believe, all the circumstances considered, that in the interest of growers and producers, as well as local dealers in communities served only by express companies, and in the interest of increased production in undeveloped regions and the consequent increased consumption of perishable products, the operation of the order and commission departments of the express companies should be allowed to continue. The business of the whole country has flourished under existing conditions through many years of rapid development, and these conditions should not be changed unless the interests of the public demand it, and of that there is no convincing evidence.

Complainants argue that this Commission should take jurisdiction of the questions here involved, for the reason that the defendants would have their remedy in the courts if dissatisfied with any order issued by the Commission. Certainly if the defendants are pursuing unlawful practices there is a remedy in some jurisdiction. As before stated, there is no room for doubt as to the jurisdiction of this Commission over the practices of the defendants as carriers, or of the power of this Commission to order them to remove any element of unjust or undue discrimination that may be shown to exist in such practices. The extent, if any, to which defendants transport money for themselves for the purpose of settling balances in the carrying on of their financial operations has not been shown. The relationship of the cost of this service and of the charges made therefor has not been presented. There may or may not be some question of unjust discrimination involved therein, and it would therefore be improper for this Commission to grant the motion to dismiss this case without giving the complainants an opportunity to present their proofs in support of this alleged discrimination and the defendants an opportunity to answer same. We shall therefore, unless advised by complainants of their desire to dismiss this proceeding, set it down in due time for hearing of further testimony along the lines herein indicated.

The information sought by complainants through the issuance of a subpoena duces tecum does not at this time seem to be necessary or pertinent to a showing of unjust discrimination in the transportation of money. It does not appear that it would be proper to impose the large expense that preparation of the information requested would involve. The request for the subpoena duces tecum is therefore denied.

No. 1763.

CENTRAL COMMERCIAL COMPANY

v.

MOBILE, JACKSON & KANSAS CITY RAILROAD  
COMPANY ET AL.

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*Submitted December 8, 1908. Decided January 5, 1909.*

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Complainant had shipped to it 1 carload of rosin from Louin, Miss., to Peoria, Ill., for the transportation of which defendants exacted a combination rate of 61 cents per 100 pounds, whereas Laurel, Miss., only 8 miles from Louin, had a through rate of 27 cents per 100 pounds. Defendants, admitting the facts, have since given Louin the Laurel rate on rosin between the points and are willing to make reparation. Reparation awarded, and defendants required to maintain for two years no higher rate on rosin from Louin than from Laurel to Peoria.

*Albert N. Charles* for complainant.

*McIntosh & Rich* for Mobile, Jackson & Kansas City Railroad Company.

*Ed. Baxter, Sidney F. Andrews,* and *Blewett Lee* for Illinois Central Railroad Company.

#### REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

On September 28, 1907, Gilchrist-Fordney Company shipped from Louin, Miss., a local point on the Mobile, Jackson & Kansas City Railroad, 8 miles from Laurel, Miss., to complainant at Peoria, Ill., 1 carload of 33,230 pounds of rosin, on which freight charges were collected on basis of the Ackerman, Miss., combination of 61 cents per 100 pounds, on weight of 35,700 pounds, an alleged overcharge on weight of \$15.07 and in rate of \$112.98, a total overcharge of \$128.05, for which reparation is asked. The basis therefor is the alleged unreasonableness of combination rate of 61 cents per 100 pounds, as compared with a through rate of 27 cents per 100 pounds which, at the time of the shipment, was in effect from Laurel, Miss., and a group of near-by points to Peoria and Chicago, Ill.

15 I. C. C. Rep.



Defendants admit the facts and that the rate from Louin should not be higher than from Laurel; show that on February 11, 1908, by Supplement No. 1 to Mobile, Jackson & Kansas City Railroad Tariff, I. C. C. No. 686, they established from Louin, Miss., to Peoria, Ill., a rate of 27 cents per 100 pounds on rosin in carload lots; declare willingness to make reparation if so ordered by the Commission, and agree to submit the case upon the pleadings.

The alleged and admitted unreasonableness of the rate charged in this instance is based upon a comparison with the rate upon the same commodity from a group of points around and near to Louin, of which Laurel may be taken as fairly representative. Manifestly the rate from Louin should not exceed the rate from Laurel and other points grouped therewith, and we so find.

The overcharge of \$15.07 on account of difference in weight is a straight overcharge above the lawful tariff rate and should be refunded without order of this Commission.

As to the overcharge on account of the admittedly unreasonable rate, an order will be entered awarding reparation in the sum of \$112.98, with the requirement that the rate on rosin from Louin, Miss., to Peoria, Ill., shall not, for a period of not less than two years from the date of said order, exceed the rate in force at the same time from Laurel, Miss., to the same point of destination.

15 I. C. C. Rep.

No. 1538.

J. A. WHITCOMB

v.

CHICAGO &amp; NORTHWESTERN RAILWAY COMPANY ET AL.

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*Submitted October 30, 1908. Decided January 5, 1909.*

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1. Defendants' rate of 92 cents per 100 pounds for the transportation of an uncrated automobile from Beatrice, Nebr., to Kenosha, Wis., not found unreasonable.
2. Classification of new and old automobiles in same class not found, under the circumstances, unjust, as no definite line can be drawn between old and new machines of different value.

*J. A. Whitcomb* for complainant in person.

*E. B. Peirce* and *S. H. Johnson* for Chicago, Rock Island & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

*LANE, Commissioner:*

The complaint is that the rate of 92 cents per 100 pounds, with minimum weight of 5,000 pounds, charged by defendants for transporting an uncrated automobile from Beatrice, Nebr., to Kenosha, Wis., is unreasonable, and reparation is claimed in the sum of \$32.66, being the amount in excess of what complainant claims would have been a reasonable rate on a shipment made May 24, 1907, of one automobile, weighing 725 pounds, between the points named and at the rate named. Defendants answer that the rate charged was according to the published tariff and that it is just and reasonable.

The tariffs apply the following rates on automobiles: "Not boxed or crated, double first class at actual weight, subject to a minimum of 5,000 pounds each at first class. Boxed or crated, one and one-half times first class at actual weight." Applying this rate on the automobile in question, the charge was upon a minimum of 5,000 pounds at the first class rate of 92 cents, or \$46.

Complainant claims, and it is undisputed, that the agent at Beatrice informed her that if the automobile was not crated or boxed it would be charged at the rate of \$1.84 per 100 pounds (double first class) on the actual weight. In this he was mistaken. The lawful published rate was charged, and the only question for determination is whether that rate is unreasonable. This involves the consideration (1) whether the first class rate of 92 cents per 100 pounds between Beatrice and Kenosha is in itself unreasonable, and (2) whether the

classification of uncrated automobiles is unreasonable. An examination of the tariffs shows that this rate is applied on a vast number of articles, such as dry goods, hats and caps, boots and shoes. It has been in effect for years and there has been no general attack upon its reasonableness. In this case there is no evidence whatever that would sustain a finding that the first class rate of 92 cents is unreasonable.

There remains the question of whether the uncrated automobile is improperly classified. Some complaint was made that this was an old, cheap machine of small value. As is well known, automobiles vary in value when new probably from \$300 to \$10,000. They become second-hand or old machines practically as soon as they leave the shops. The carriers have applied one rate to all machines and we do not see how it would be possible for them to differentiate between machines of different values and whether old or new, as there would be no place where a definite line could be drawn. Under the Official Classification applicable east of the Mississippi River the classification is the same as west of the river, except that on the larger machines in the eastern field the minimum is 8,000 pounds instead of 5,000. There could be few articles of freight more dangerous and unsatisfactory to handle than the average automobile, uncrated. In this particular case the records of the railroad show that it had to be transferred from one car to another on three occasions. To prevent damage, it is apparent that the machine must be handled with great care in these transfers and must be very carefully placed in the car so as to prevent its sustaining injury from other freight. It is also true that it would require a comparatively small injury to the average automobile to make the damage far in excess of the revenue received. Upon the evidence we are not justified in holding that automobiles are improperly classified, inasmuch as they are classed generally with ambulances, barouches, brakes, and hacks, although the last-named vehicles carry a 6,000-pound minimum. Passenger vehicles (set up) generally, under the Western Classification, are subject to a minimum weight of 5,000 pounds each.

What appears to complainant as the principal hardship is that she made application to the representative of the carrier at the point of shipment and upon the information furnished by such representative shipped the automobile, and upon its receipt at destination found that she had been misinformed and a rate much higher applied. Mistakes of this kind are being constantly brought to the attention of the Commission, and apparently occur more frequently than they should or would occur if proper care were exercised by carrier's agents, but as the law stands there is no remedy before the Commission, as the published rates must be applied regardless of what agents may state. If complainant has any remedy, it is not before this Commission. The complaint will be dismissed.

No. 1494.

PAOLA REFINING COMPANY

v.

MISSOURI, KANSAS &amp; TEXAS RAILWAY COMPANY.

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*Submitted November 4, 1908. Decided January 7, 1909.*

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1. The Commission is justified in reducing a rate only when, upon consideration of all the facts and circumstances, it is of opinion that the rate in question is unreasonable, unduly discriminatory, or otherwise in violation of the act to regulate commerce.
2. Rates established by state authority are presumed to be reasonable, but the same presumption also attaches to rates voluntarily established by carriers, and in proceedings before this Commission no greater sanctity can be presumed in respect of rates established by a state railroad commission than of those voluntarily established by carriers.
3. Complaint in this case attacks the lawfulness of defendant's rates upon petroleum oil in carloads from Paola, Kans., to Boonville and Holden, Mo., upon the ground that they are much higher than its rates from Kansas City, Mo., to the same destinations, although in the latter case the traffic is hauled through Paola, but it appearing that such lower rates are fixed by the Missouri commission for the transportation of intrastate traffic; that inasmuch as the short line between Kansas City and said destinations lies entirely within Missouri and is required to publish said state rates; that defendant must meet said state rate on its interstate haul between Kansas City and said destination points or relinquish its opportunity to participate in the business, and that complainant would not be benefited by withdrawal of defendant from such transportation; *Held*, That the rate adjustment, in view of the substantial dissimilarity in the circumstances and conditions surrounding the traffic from Kansas City and Paola, does not violate the prohibition against unjust discrimination nor the long and short haul provision of the statute, and that it does not appear, from the information in the possession of the Commission, that the rates complained of are unreasonable. Complaint dismissed without prejudice.

*J. M. Swift* for complainant.*W. B. Groseclose* for defendant.

## REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

The rates over defendant's line for the transportation of petroleum oil, in carloads, from Paola, Kans., to Boonville, Mo., a distance of 138 miles, and to Holden, Mo., a distance of 54 miles, are, respectively, 15 I. C. Rep.

17 and 15 cents per 100 pounds. The defendant's line from Kansas City, Mo., to these points of destination lies partly in Kansas and passes through Paola. For the transportation of petroleum oil, in carloads, from Kansas City to Boonville, a distance of 182 miles, and to Holden, a distance of 97 miles, over defendant's line through Paola, the rates are, respectively, 9.85 cents and 7 cents per 100 pounds. It is alleged that the rates from Paola to Boonville and Holden are unreasonable, and that the much lower rates applying from Kansas City through Paola to the destinations in question unduly discriminate against complainant's refinery at Paola and unjustly prefer the refinery of the Standard Oil Company at Sugar Creek, Mo. In justification of this rate adjustment the following facts are shown:

Boonville and Holden are both reached by the Missouri Pacific Railway Company, as well as by defendant. In carrying traffic from Kansas City to Boonville and Holden, the transportation via the Missouri Pacific is wholly within the state of Missouri, and the rates of 9.85 and 7 cents, respectively, are distance rates prescribed by the board of railroad and warehouse commissioners of that state by order of November 1, 1906. The defendant's line from Kansas City to Boonville and Holden passes partly through Kansas, as above stated, and therefore the rates in question are not subject to the order of the Missouri commission; but it is obvious that if this company desires to participate in the transportation of oil from Kansas City to these points it must meet the rates applying via the short line, which is wholly within the state of Missouri. The distances from Kansas City to Boonville and Holden via the Missouri Pacific are 119 miles and 50 miles, respectively.

The Standard Oil refinery at Sugar Creek is about 11 miles outside of Kansas City and is reached by the Atchison, Topeka & Santa Fe and the Kansas City Southern. These roads have in effect extended the switching limits of Kansas City to include Sugar Creek by establishing a switching charge of \$4 per car for the transportation of oil from Sugar Creek to Kansas City.

In Western Classification territory, in the absence of commodity rates, petroleum oil is carried at fifth class rates. The fifth class rates from Paola to Boonville and Holden, respectively, are 27 cents and 16 cents per 100 pounds, the Paola rates in question being in respect of Boonville 10 cents, and in respect of Holden 1 cent less than fifth class rates.

Of the various oil-refining points in the southern Kansas oil field, Paola is the nearest to Kansas City, being 43.7 miles distant from that point, and its rates to Holden and Boonville are at least 2 cents less than from other refining points in the same field, such as Coffeyville, Humboldt, Chanute, and Erie.

It needs no argument to show that Paola can not compete with the Sugar Creek refinery under the burden of a disadvantage in rates of 7 or 8 cents per 100 pounds, or from 21 to 24 cents per barrel. The rate adjustment in question does not violate section 4 of the act, for the reason that the circumstances and conditions surrounding the transportation of oil from Kansas City and Paola are substantially dissimilar, due to the fact that Kansas City is a competitive point and that, owing to the short-line rates of a road wholly within the state of Missouri, the rates from Kansas City to Boonville and Holden are for competitive reasons practically forced upon the Missouri, Kansas & Texas. It remains, then, to determine whether the rates from Paola to these destination points are unreasonable in themselves or unduly discriminatory.

We have no evidence concerning the unreasonableness of the rates *per se* because the complainant based its contention wholly upon the lower rates from Kansas City. The rates here challenged are relatively upon the same basis as rates from other Kansas refining points to the same destinations. Apparently the only question remaining is whether the rate adjustment here presented constitutes undue discrimination within the meaning of section 3 of the act.

There can be no doubt that the rates from Kansas City to Boonville and Holden are forced upon defendant by the action of the Missouri railroad commission. The rates voluntarily established by the Missouri Pacific from Kansas City to Boonville and Holden were 15 and 14 cents per 100 pounds, respectively, and were in force prior to March 1, 1904. By successive orders of the Missouri commission those rates have been reduced to 9.85 and 7 cents, respectively, or from 40 to 50 per cent.

The Commission has no information which would enable it to determine whether or not the Missouri rates are unreasonably low. They are presumed, of course, to be reasonable, but the same presumption also attaches to rates voluntarily established by the carrier. Whatever the fact may be in this respect, the undoubted result is that the rates fixed by the Missouri commission give a practical monopoly of the oil business at Boonville and Holden to the Standard Oil refinery at Sugar Creek and effectively eliminate competition by independent refineries in the southern Kansas field. Obviously it would not benefit the Paola refinery in the least if the Missouri, Kansas & Texas should withdraw from the Kansas City business, for the reason that the Sugar Creek refinery could still send its product at the same rates via the Missouri Pacific.

The Commission is justified in reducing a rate only when upon consideration of all the facts and circumstances it is convinced that the rate in question is unreasonable or unduly discriminatory. No such

finding is warranted by the record now before us. The peculiar conditions which have brought about the lower rates from Kansas City to Boonville and Holden are not within the control of the defendant in the present case, and therefore it can not properly be charged with unjust discrimination. As has already been said, we can not accept the rates established by the state of Missouri as conclusive of the unreasonableness of the interstate rates in question, as to do so would apparently warrant a reduction not only in the particular rates here in controversy but also in oil rates generally throughout the whole territory involved, and would perhaps require a reduction of class rates as well. The basis for a change in rates rests almost entirely upon the probative force to be derived from the lower rates on intra-state shipments established by the Missouri commission. We are of opinion that such a showing does not constitute a sufficient and just basis for an order, which, if confined to the points here in question, might result in unjust discrimination against other points in the southern Kansas oil field, or, if carried to its logical result, would require a reduction from the entire field. We would not feel justified in making the order asked, unless convinced that the present rates are unreasonable, or that there should be a general reduction from competitive points as well as from Paola. Upon the meager record in this case we are not convinced that the rates are unreasonable. The complaint will therefore be dismissed without prejudice to the right of complainant, in case it so desires, to offer testimony in a proper proceeding attacking the reasonableness of the rates here in question.

15 I. G. C. Rep.

No. 1595.

C. C. FOLMER &amp; COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

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Submitted November 1, 1908. Decided January 6, 1909.

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Without tariff provision therefor, prior to August 28, 1906, the Wisconsin Central Railroad had an arrangement whereby it would hold at Menasha, Wis., shipments of shingles consigned to complainant which originated on the Pacific coast, subject to rebilling and forwarding to points of destination beyond Chicago, and under this arrangement shipments would move to Chicago on the proportional rate applying between Minnesota Transfer and Chicago the same as if they had not been stopped at Menasha. In connection with a carload shipment delivered March 2, 1906, to the Great Northern Railway at Bellingham, Wash., that company's agent failed to note on billing the bill of lading instructions for delivery to the Wisconsin Central at Minnesota Transfer, and shipment was at that point turned over to the Chicago, Milwaukee & St. Paul Railway, whence it was rebilled to Detroit, Mich., resulting in the application of a 10-cent rate, Minnesota Transfer to Menasha, plus an 8½-cent rate, Menasha to Chicago, instead of the 10-cent proportional rate, Minnesota Transfer to Chicago, which would have been applied under complainant's arrangement with the Wisconsin Central had the car been delivered to that road at Minnesota Transfer. The negligence of the Great Northern Railway caused complainant to pay \$28.50 more than it presumably would have paid, but not more than it was lawfully bound to pay under the tariff then in force. The rate exacted was the only rate lawfully applicable, under tariffs on file with the Commission, via either route; *Held*:

1. The holding, storing, unloading and reloading of Pacific coast shipments of shingles at Menasha subject to rebilling and reconsignment under the proportional rate from Minnesota Transfer to Chicago was a privilege and service that required publication in a tariff in order to be lawful.
2. An act of negligence which deprives the shipper of the enjoyment of an unlawful rate can not be made the basis of a claim for reparation. Complaint dismissed.

*C. C. Folmer* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*O. E. Butterfield* for Michigan Central Railroad Company.

#### REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

Complainant alleges the misrouting of a carload of shingles resulting in an overcharge of \$28.50, for which reparation is demanded. The complaint was filed June 11, 1908, but complainant's claim was



presented to the Commission informally February 27, 1908, and this we hold is sufficient to stop the running of the statute of limitations. The further facts are as follows:

Complainant is engaged in the wholesale lumber and shingle business at Grand Rapids, Mich. On March 2, 1906, the F. W. Powers Company delivered to the defendant the Great Northern Railway Company, at Bellingham, Wash., for shipment to complainant at Menasha, Wis., a car of red-cedar shingles for which that company issued a bill of lading, the material parts of which are as follows:

Bellingham, Washington, March 2, 1906. Received from F. W. Powers & Company G. N. car No. 14486 consigned to C. C. Folmer & Company, Menasha, Wis., via G. N. & Minn. Trf., c/o W. C. R. R. 222½ thousand R. C. shingles, P. Casey, agt.

It is admitted that this bill of lading called for routing via the Great Northern Railway to Minnesota Transfer and the Wisconsin Central Railway from that point to Menasha, but the agent of the Great Northern at Bellingham failed to note on the billing the routing beyond Minnesota Transfer, and when the car arrived at that point it was delivered to the Chicago, Milwaukee & St. Paul Railway which transported it to Menasha.

At and prior to the time this shipment moved, complainant claims it had an arrangement with the Wisconsin Central whereby that company would hold at Menasha all shipments of shingles consigned to complainant which originated on the Pacific coast, subject to rebilling and forwarding to points of destination beyond Chicago; and that under this arrangement shipments would move to Chicago on the proportional rate applying between Minnesota Transfer and Chicago the same as if they had not been stopped at Menasha. The testimony of complainant shows that in accordance with this understanding shipments were sometimes held in the cars and even unloaded at Menasha, awaiting rebilling instructions from complainant, and that for the privilege of rebilling and the extra service of holding the cars and of unloading and reloading them the Wisconsin Central made no extra charge. The president of complainant company stated his belief that shipments would have been held for thirty days without particular objection, and that he supposed the privilege open to everyone, although he had no actual knowledge of its use by anyone else, or whether it was permitted by tariff provision.

A careful examination of the Wisconsin Central tariffs on file with the Commission at the time this shipment moved fails to disclose any provision of that character. However, on August 28, 1906, the effective date of the amended act to regulate commerce, the Wisconsin Central filed its tariff, I. C. C. No. 1719, permitting the storing and holding of Pacific-coast shipments of shingles at Menasha, subject to reconsignment to Chicago or points beyond, and making the propor-

15 I. C. C. Rep.

tional rate from Minnesota Transfer to Chicago applicable to shipments up to that point.

Complainant forwarded original bill of lading to the agent of the Wisconsin Central at Menasha with instructions to forward car on arrival to C. W. Restricks, Detroit, Mich., care of the Michigan Central Railroad at Chicago. The agent of the Wisconsin Central delivered the same with complainant's instructions to the agent of the Chicago, Milwaukee & St. Paul Railway Company at Menasha, and that company issued a separate bill of lading from that point to Detroit. The weight of the shipment was 33,500 pounds, and upon delivery at destination the Michigan Central collected from complainant's consignee freight charges in the sum of \$259.78, resulting from the application of the following rates on said weight:

*Freight rate collected.*

From—	Rate per 100 pounds.
	(cents.)
Bellingham to Minnesota Transfer.....	50
Minnesota Transfer to Menasha.....	10
Menasha to Chicago.....	8½
Chicago to Detroit.....	9

Complainant sold the car of shingles to his consignee subject to delivery at Detroit, and upon payment of the freight the consignee deducted the same from the amount of the invoice price. Had the proportional rate of 10 cents from Minnesota Transfer to Chicago been applicable to this shipment, the 8½ cents from Menasha to Chicago, which constitutes the alleged overcharge, would not have been included.

The lawful joint through rate from Bellingham to Minnesota Transfer was 50 cents per 100 pounds and from Bellingham to Menasha 60 cents. A proportional rate of 10 cents from Minnesota Transfer to Menasha, applicable on shipments of shingles originating west of the Dakota-Montana line, was also in effect via the lines of the Chicago, Milwaukee & St. Paul and the Wisconsin Central. The rate on the shipment in question from Bellingham to Menasha would have been the same whether the joint through rate or the rate to Minnesota Transfer plus the proportional beyond had been applied, no matter which carrier transported the car from Minnesota Transfer to Menasha. The rate of 9 cents from Chicago to Detroit is admitted to have been the lawful rate then in force between said points and applicable to this shipment. The overcharge for which reparation is claimed resulted, as above shown, from the collection of the local rate of the Chicago, Milwaukee & St. Paul from Menasha to Chicago. That company did not permit shingle shipments from the Pacific coast

to be held at Menasha subject to rebilling or reconsigning orders. The lawful rate was collected via the line over which the shipment actually moved, and if the overcharge resulted from misrouting it is clear that neither the Chicago, Milwaukee & St. Paul nor the Michigan Central can be charged with responsibility therefor. If there is any merit in complainant's contention the obligation to refund rests wholly upon the Great Northern.

Section 6 of the act provides that carriers shall file their tariffs with the Commission showing their rates, fares, and charges, and all privileges or facilities granted or allowed, and also all rules or regulations which in anywise change or affect their rates or the value of the service rendered to the passenger or shipper. The same section further provides that carriers shall not engage or participate in the transportation of passengers or property unless they file such tariffs, and they are likewise forbidden to extend to any shipper or person any privileges or facilities except such as are specified in their tariffs. It is clear that the holding, storing, unloading, and reloading of Pacific coast shipments of shingles at Menasha, subject to rebilling and reconsignment under the proportional rate from Minnesota Transfer to Chicago, was a privilege and service that required publication in a tariff in order to be lawful.

The agent of the Great Northern at Bellingham was clearly negligent in failing to observe and note on the billing the specified routing instructions contained in the bill of lading; but his failure to do so did not and could not result in any greater charge from point of origin to Menasha. The delivery of the shipment, however, to the Chicago, Milwaukee & St. Paul did result in the exaction of a greater charge from Menasha to Chicago than would probably have been made if the shipment had moved via the Wisconsin Central from Minnesota Transfer to Menasha, but the application of the proportional rate from Minnesota Transfer to Chicago by the Wisconsin Central on this stop-over shipment at Menasha, would have been in violation of law.

Complainant's claim, therefore, rests upon this proposition: The negligence of the Great Northern Railway Company caused it to pay \$28.50 more than it presumably would have paid, but not more than it was lawfully bound to pay under the tariff then in force. An act of negligence on the part of the carrier which deprives a shipper of the enjoyment of an unlawful privilege can not be made the basis of a claim for reparation.

The complaint is therefore dismissed and an order will be entered accordingly.

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No. 1653.

LANING-HARRIS COAL &amp; GRAIN COMPANY

v.

ST. LOUIS &amp; SAN FRANCISCO RAILROAD COMPANY.

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*Submitted November 23, 1908. Decided January 7, 1909.*

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Between November 8, 1906, and April 20, 1907, defendant through error collected from complainant as switching charges upon interstate carload shipments of hay to Kansas City, Mo., \$42 in excess of the amount authorized by its tariff, and refused to refund the same because at a prior time it had, through error, collected an amount less than that required by its tariffs, which it has since been unable to collect from complainant. Upon complaint, it pleaded set-off of the amount alleged to be due it from complainant, *Held*:

1. That inasmuch as the Commission is without authority to adjudicate the claim of a railroad company against a shipper, it can not consider the counter-claim of defendant.
2. That the Commission has authority to award damages in a case where a carrier collects a greater sum on an interstate shipment than is fixed by its published tariffs. Reparation in the sum of \$42 awarded.

*C. W. Durbin* for complainant.

*E. B. Peirce* for defendant.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

This complaint alleges the exaction by defendant of unlawful switching charges upon certain carloads of hay consigned to complainant at Kansas City, Mo. Complainant is a Missouri corporation engaged at Kansas City, in shipping, buying, and selling hay, wood, coal, and grain. Defendant is a common carrier subject to the act to regulate commerce. Defendant's tariff, I. C. C. No. 4512, provides that switching charges at Kansas City to the extent of \$3 per car will be absorbed on inbound shipments of hay, irrespective of point of origin or destination, when the net revenue upon the car is \$10 or more. Upon various dates between November 8, 1906, and April 20, 1907, defendant delivered to complainant at Kansas City 14 carloads of hay, shipped over its line from Quapaw, Ind. T., upon

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which, in accordance with said tariff, it should have absorbed switching charges at Kansas City to the extent of \$3 per car, but through error of its agent it collected as switching charges \$3 per car upon 4 of said cars, \$4 per car upon 4 of said cars, and \$5 per car upon 6 of said cars, or \$58 in all; whereas, under said tariff, it should have collected only the switching charges in excess of \$3 per car, or \$16 in all. We find, therefore, that defendant unlawfully exacted from complainant the difference between \$16, the amount which should have been collected, and \$58, the amount actually collected, or \$42, as switching charges upon said cars of hay.

Upon refusal of defendant to refund the amount exacted in violation of said provision this proceeding was instituted. In answer to the complaint defendant admitted that it is indebted to complainant in said sum, but shows that in 1902 and 1903 it undercharged complainant in the sum of \$109.50 through failure of its agent to collect proper switching charges, and that complainant has refused to pay the undercharge. Defendant therefore claims set-off and asks dismissal of the complaint. The facts are undisputed, but two important legal questions are presented: (1) In a proceeding under the act to regulate commerce can the Commission award set-off of the claim of the carrier against the claim of the shipper? (2) Has the Commission authority to award reparation in a case merely involving collection of a rate higher than that named in the published tariff?

It seems obvious that the Commission has no authority to award set-off. The Commission is not empowered to make an order requiring the complainant to pay money damages to a railroad company; it has no general common law or equity jurisdiction, but only such authority as is prescribed in the act to regulate commerce. Generally speaking, the right to award set-off in an action at law is created by statute to avoid multiplicity of suits, but the right to make such award necessarily involves authority in the court to adjudicate the claims of both parties. It is clear that the Commission, whose authority is in the nature of an extraordinary remedy, is not authorized to adjudicate the claim of a railroad company against a shipper, but only the claim of a shipper against a railroad company for violation of the interstate commerce law. To award set-off amounts to the same thing as adjudicating the claim of the railroad company against the shipper, and entry of an order based upon a set-off could occur only after such adjudication. Plainly, if the Commission is without authority to determine the rights of the parties, it is also powerless to enter an order based upon a determination of those rights. Therefore we conclude that the Commission can not consider the counterclaim of defendant in disposing of this case.

Whether the Commission has authority to award damages in a case where a carrier collects a greater sum on an interstate shipment than is fixed by its published tariffs, or whether the shipper must seek his remedy in the courts, presents a question somewhat more difficult. But upon consideration of the various provisions of the act, it is believed that the question should be resolved in favor of the Commission's authority to make such an order. The Commission is authorized to award reparation to any person or persons found to be damaged by any common carrier subject to the provisions of the act, for a violation thereof. One of the leading prohibitions of the act is that against the exaction of an unreasonable rate, and it is well settled that the Commission has authority to award reparation in case of the exaction of an unreasonable rate. As against the carrier its published tariff rate is conclusive of the fact that any higher rate is unreasonable. It seems fairly certain that in cases of the exaction of a rate higher than the published tariff the shipper may bring his suit in court in the first instance, but the act also appears to give the Commission and the courts concurrent jurisdiction in this respect. An order will therefore be entered requiring defendant to pay to complainant the amount of the admitted overcharge. In arriving at this conclusion we are not unmindful of the fact that to enforce our order complainant may have to go into a court which has authority to allow the set-off alleged by the railroad company, and this may entirely defeat recovery by complainant under the order, if the set-off is held to be a good defense. But such a difficulty seems unavoidable in cases of this kind, where the complainant elects to come before the Commission in preference to suing before a court in the first instance.

An order will be entered accordingly.

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No. 1663.

LINDSAY BROTHERS

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL

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Submitted November 23, 1908. Decided January 5, 1909.

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Complainant made eight separate L. C. L. shipments of boilers from Kalamazoo, Mich., to New Glarus, South Wayne, Monticello, and Monroe, Wis., over defendants' lines, upon which shipments defendants' rates exceeded the combination of locals; *Held*, That the through joint rates at the time of shipments were unjust and unreasonable to the extent that they exceeded the combination of locals. Reparation awarded.

*Herbert F. Lindsay* for complainant.

*O. E. Butterfield* for Michigan Central Railroad Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

#### REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

On various dates between January 28, 1907, and April 8, 1908, complainant made eight separate L. C. L. shipments of boilers, less than 10 feet in length, from Kalamazoo, Mich., to New Glarus, South Wayne, Monticello, and Monroe, Wis., via the Michigan Central Railroad, as the initial carrier, to Chicago, and the Chicago, Milwaukee & St. Paul Railway from that point as delivering carrier. The rate charged, 65 cents per 100 pounds, was a joint through rate contained in Central Freight Association Tariff No. 12, I. C. C. No. 12, whereas, at the same time, the combination rates on Chicago were, to New Glarus and South Wayne, 52 cents, and to Monticello and Monroe, 51.5 cents. The complaint attacks the reasonableness of said joint through rates exceeding the sums of the locals, and reparation in the sum of \$31.31, the difference between the joint through rates and the combinations of locals on the shipments made, is asked.

The defendant Michigan Central Railroad Company answering, admitted all the allegations of the complaint, except that the joint through rate was unjust or unreasonable, that any overcharge

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was collected, or that complainant is entitled to relief, and the defendant Chicago, Milwaukee & St. Paul Railway Company averred that the joint through rate was reasonable, and denied that complainant is entitled to reparation.

At the hearing complainant submitted duplicates of the invoices, original paid expense bills, and original bills of lading for all the shipments. The defendants submitted testimony to the effect that the combination rate on Chicago should properly have included in it the cost of transfer of shipments from depot to depot in Chicago, but later in the day withdrew such testimony on the ground of its having been put in under a misapprehension of the facts and while unaware that Chicago Switching Tariff contains Rule No. 6, which provides as follows:

No charge will be made for intermediate service in the way of switch or drayage on freight carloads or less consigned to points beyond Chicago on joint through rates or combinations of the locals.

Therefore, while being unwilling to concede the unreasonableness of the joint through rate of 65 cents per 100 pounds, defendants offered, upon the record, to immediately publish joint through rates on the commodity shipped on the basis of the combinations of locals on Chicago, and if the Commission found the joint through rate to be unreasonable, and awarded reparation, to pay the same.

No testimony is in the record overturning the prima facie presumption of the unreasonableness of the joint through rate in excess of the sums of the locals, and the burden of proof, in accordance with the rule of the Commission, having been upon the defendants, we find that the joint through rate of 65 cents per 100 pounds on these shipments was unjust and unreasonable, and should not have exceeded the combinations of locals on Chicago of 52 cents per 100 pounds to New Glarus and South Wayne, and 51.5 cents per 100 pounds to Monticello and Monroe, and an order will be entered requiring the establishment and maintenance of joint through rates of 52 cents per 100 pounds on this commodity from Kalamazoo, Mich., to New Glarus and South Wayne, Wis., and 51.5 cents per 100 pounds from Kalamazoo, Mich., to Monticello and Monroe, Wis., and awarding reparation to complainant in the sum of \$31.59, which we find to be the difference between the amount collected on these shipments and what would have been collected on the basis of the rates which are herein found to be reasonable.



No. 1121.  
STATE OF OKLAHOMA  
v.  
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-  
PANY ET AL.

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*Submitted September 8, 1908. Decided January 8, 1909.*

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Defendants' rates for the transportation of petroleum and its products in carloads from refining points in Kansas and Missouri to specified points in Oklahoma found unreasonable, and lower maximum rates prescribed for the future.

*Charles West and George A. Henshaw* for complainant.

*E. B. Peirce and S. H. Johnson* for Chicago, Rock Island & Pacific Railway Company.

*Robert Dunlap and T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*E. B. Peirce and J. P. Mace* for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The state of Oklahoma charges that the defendants maintain unjust and unreasonable rates for the transportation of petroleum and its products in carloads from refining points in Kansas and Missouri to Guthrie, Oklahoma City, Medford, Enid, El Reno, Granite, Perry, and intermediate points in the state of Oklahoma.

While Oklahoma possesses one of the greatest oil fields on the continent, her population is dependent for refined oil largely upon the products of the refineries of Kansas. There are refineries at Muskogee, Tulsa, Chelsea, Enid, and Oklahoma City, and doubtless these establishments will expand and others will be developed which in time will more than meet the local demand for other refined products. At present, however, the greater percentage of Oklahoma's consumption of kerosene is subject to an interstate freight movement, the

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chief Kansas refining points being Independence, Coffeyville, Caney, Chanute, Erie, and Neodesha, Kans., and Kansas City, Mo. At the time the complaint was filed the carload rates in cents per 100 pounds in force were as follows:

From—	To Oklahoma points.						
	Guthrie.	Oklahoma City.	Medford.	Enid.	El Reno.	Granite.	Perry.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Kansas City, Mo.....	43	43	43	43	43	43	43
Independence, Kans.....	32	34	28	33	24	38	29
Coffeyville, Kans.....	32	34	28	33	34	38	29
Caney, Kans.....	32	34	28	33	34	38	29
Chanute, Kans.....	32	34	28	33	34	38	29
Erie, Kans.....	32	34	28	33	34	38	29
Neodesha, Kans.....	32	34	28	33	34	38	29
Newton, Kans.....	41	47	38	45	56	67	36
Iola, Kans.....	49	49	43	48	66	92	48
Leavenworth, Kans.....	49	49	43	48	49	66	48

Comparison of these rates with those obtaining generally between other points of production and destination for similar distances shows that the rates complained of exceed generally the rates charged for like hauls in any other part of the country. The following table brings into juxtaposition the rates on refined petroleum from the main Kansas producing points referred to in this complaint to points of destination in Oklahoma with the rates from the same points of origin in Kansas to points in Arkansas and Missouri:

From Neodesha, Independence, etc., to—	Distance from Independence.	Rate per 100 pounds.	From Neodesha to—	Distance from Neodesha.	Rate per 100 pounds.	From Neodesha to—	Distance from Neodesha.	Rate per 100 pounds.
Oklahoma points. <sup>a</sup>			Arkansas points. <sup>b</sup>			Missouri points. <sup>b</sup>		
	Miles.	Cents.		Miles.	Cents.		Miles.	Cents.
Blackwell.....	137	27	Osborne.....	154	20	Aurora.....	132	15
Perry.....	155	29	Avoca.....	165	20	Brookline.....	154	15
Medford.....	163	28	Gulley.....	185	20	Springfield.....	163	15
Guthrie.....	186	32	Springdale.....	180	20	North View.....	182	18
Yale.....	180	32	Fayetteville.....	190	20	Holman.....	179	18
Alva.....	190	32	Fayette Junct.....	192	20	Marshfield.....	189	18
Cherokee.....	192	33	West Fork.....	201	20	Niangua.....	195	18
Avard.....	202	34	Porter.....	219	20	Sampson.....	199	18
Oklahoma City.....	217	34	Lancaster.....	234	20	Brush Creek.....	220	18
Enid.....	284	33	Rudy.....	239	20	Stoutland.....	231	20
Shawnee.....	240	34	Van Buren.....	247	20	Richland.....	242	20
Purcell.....	251	35	Huntington.....	283	24	Swedeberg.....	250	20
Ardmore.....	318	38				Rolla.....	291	20

<sup>a</sup> The above rates are specifically named in supplement No. 22 to Oklahoma tariff No. 6-B, I. C. C. No. 53 (effective December 30, 1907). Mileage taken from Santa Fe tariff, I. C. C. No. 3621.

<sup>b</sup> The above rates are specifically named in Frisco tariff, I. C. C. No. 4255, amendment No. 41 (effective November 11, 1907). Distance or mileage taken from Frisco tariff, I. C. C. No. 4646.

An examination of what are known as the commodity oil tariffs from Kansas to Oklahoma destinations indicate that no oil is produced at Newton, Iola, and Leavenworth, as those stations are not 15- I. C. C. Rep.

named in those tariffs, and there is no evidence in the record that there is such production. Kansas City, Mo., and Independence, Coffeyville, Caney, Chanute, Erie, and Neodesha, Kans., are included in these tariffs. Under these circumstances the only rates effective from Newton, Iola, and Leavenworth are the ordinary class rates, and the Commission sees no reason for ordering a change as to them.

As to the other points named, we are of the opinion that rates on petroleum and its products in carloads, including refined oil, to points in Oklahoma covered by the complaint are unreasonable and should be reduced to the figures in cents per 100 pounds set forth in the following table:

From—	To Oklahoma points.						
	Guthrie.	Oklahoma City.	Medford.	Enid.	El Reno.	Granite.	Perry.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Kansas City, Mo.....	35	35	35	35	35	35	35
Independence, Kans.....	24	26	22	25	26	30	22
Coffeyville, Kans.....	24	26	22	25	26	30	22
Caney, Kans.....	24	26	22	25	26	30	22
Chanute, Kans.....	24	26	22	25	26	30	22
Erie, Kans.....	24	26	22	25	26	30	22
Neodesha, Kans.....	24	26	22	25	26	30	22

The relation between points of origin not having been attacked we have herein practically maintained that established by the carriers.

An order will be entered accordingly.

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## IN THE MATTER OF PASSES TO CLERGYMEN AND PERSONS ENGAGED IN CHARITABLE WORK.

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*Decided January 9, 1909.*

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The Commission entertains no doubt that carriers subject to the act may legally grant free or reduced-rate transportation to some persons engaged in charitable and eleemosynary work who may be included in any class comprehended by rules 9, 10, 11, 12, and 14 of the Transcontinental Clergy Bureau.

### REPORT OF THE COMMISSION.

#### BY THE COMMISSION:

The Commission is in receipt of a large number of protests against the construction placed upon that provision of the act to regulate commerce which authorizes the issue of free or reduced-rate transportation to ministers of religion and persons exclusively engaged in charitable and eleemosynary work. The Clergy Bureau of the Transcontinental Passenger Association has issued a circular letter representing that, as a result of certain rulings of the Commission, special transportation privileges must be withdrawn from many persons to whom they have hitherto been accorded. The classes particularly affected by this action are those comprehended by Rules 9, 10, 11, 12, and 14 of the Transcontinental Clergy Bureau, reading as follows:

**RULE 9.** Ordained clergymen acting as editors of officially recognized church papers.

**RULE 10.** Ordained clergymen acting as college presidents or professors.

**RULE 11.** Ordained clergymen acting as financial agents for church, religious, or charitable institutions, including educational institutions under church government.

**RULE 12.** Ordained clergymen engaged in Christian Temperance or Y. M. C. A. work.

**RULE 14.** Brothers of religious orders, Sisters of Charity, devoting their entire time to religious work, who habitually wear a garb distinctive of their order. Applications to be made in the legal name of applicant, the religious name also to be shown, and to be indorsed by the head of the institution with which connected; name of order or institution with which connected must always be given.

The Commission takes this occasion to state that the position taken by the Transcontinental Clergy Bureau is far in advance of anything required by the law or the rulings of the Commission. Reasonably

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interpreted, the ruling to which reference is made by the Transcontinental Clergy Bureau can not possibly necessitate the drastic action which it has taken. For information of carriers and the general public, we take this opportunity to express our views in terms that, it is hoped, will not be susceptible of misconstruction.

A clergyman does not lose his ministerial standing by reason of the fact that he leaves the pastorate for some other field of religious activity. A minister who becomes editor of a church paper, instructor in a theological seminary, financial agent for a church or other religious institution, or who engages in other work which may fairly be regarded as religious in character, and who does not abandon his ministerial work, may legally be accorded special transportation privileges.

The courts have been consistently liberal in giving construction to the words "charitable" and "eleemosynary," and we see no reason for being unduly narrow in interpreting these words as found in the act. A charitable institution is one which is administered in the public interest, and in which the element of private gain is wanting. This definition is broad enough to include hospitals, almshouses, orphanages, asylums, and missionary societies. This enumeration is not intended to be exclusive—it is only representative. It is important to note that such an institution does not necessarily lose its charitable character by reason of the fact that it is under the management of a particular denomination or sect, or because a charge is collected from some or all of those who enjoy its privileges. It is only necessary that it be conducted in the public interest and not for private gain.

The Commission entertains no doubt that carriers subject to the act may legally grant free or reduced-rate transportation to some persons who may be included in any class comprehended by Rules 9, 10, 11, 12, and 14 of the Transcontinental Clergy Bureau. We can not undertake to pass upon individual cases. It is believed that no carrier, following the principles outlined here, need have any difficulty in determining who may be given concessions in the matter of transportation.

15 I. C. C. Rep.

No. 1896.  
RED WING LINSEED COMPANY  
v.  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY.

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*Submitted October 26, 1908. Decided January 5, 1909.*

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Complainant shipped 2 carloads of flaxseed from Britton, S. Dak., to Red Wing, Minn., for the transportation of which defendant charged its published rate of 26.5 cents per 100 pounds. Since the shipments in question were made defendant has reduced the rate from Britton to Red Wing to 15.5 cents per 100 pounds; *Held*, That the 26.5-cent rate was unjust and unreasonable to the extent that it exceeded the subsequently established rate of 15.5 cents. Reparation awarded.

*Charles A. Butcher* for complainant.

*William Ellis* for defendant.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

The petition assails the reasonableness of rate on flaxseed in carload lots from Britton, S. Dak., to Red Wing, Minn., between January 3 and June 3, 1908, of 26.5 cents per 100 pounds and specifically asks reparation in the sum of \$136.76 on 2 carloads of flaxseed shipped from Britton January 4 and March 11, 1908. It is alleged that a rate higher than 15.5 cents per 100 pounds for the transportation of that commodity was unjust and unreasonable.

The defendant, answering, admits the facts set forth in the complaint and that "on account of other conditions, the application of the rate of 26.5 cents per hundredweight, as set forth in said complaint, was in fact unreasonable and excessive." It avers, however, that said rate of 26.5 cents per 100 pounds was the lawful tariff rate in effect at the time the shipments moved. It shows that effective June 3, 1908, it published in supplement 31 to I. C. C. No. A-9945 a rate of 15.5 cents per 100 pounds on flaxseed, carloads, from Britton, S. Dak., to Red Wing, Minn., and admits that that rate is just and reasonable.

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By stipulation entered into between complainant and defendant the case was submitted on the pleadings, the filing of briefs and hearing of arguments being waived.

On the pleadings the Commission finds that a rate of 26.5 cents per 100 pounds for the transportation of flaxseed on dates these shipments moved was unjust and unreasonable to the extent that it exceeded the subsequently established rate of 15.5 cents per 100 pounds for the transportation of the same commodity between the same points, and that the complainant is entitled to reparation in the sum of \$136.76, the difference between the charges on the 2 carloads at the rate of 26.5 cents per 100 pounds and the rate of 15.5 cents per 100 pounds, herein found to be reasonable.

An order will be entered accordingly.

15 I. C. C. Rep.

No. 1672.  
L. B. MENEFEE LUMBER COMPANY  
v.  
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted October 27, 1908. Decided January 7, 1909.

1. Defendants' rate of 32.5 cents per 100 pounds for the transportation of yellow pine lumber from Lake Charles, La., to El Paso, Tex., a distance of 1,067 miles over two lines, can not be found unreasonable because a single line has a published rate on such commodity between the same points of 25 cents per 100 pounds, carrying it a distance of 972 miles, even though defendants subsequently for competitive reasons reduced their rate to 25 cents per 100 pounds. Reparation denied and complaint dismissed.
2. Whatever may have been the practice in the past of "meeting the rate," the act, and the decisions of the Commission interpreting its provisions, unmistakably lay down the doctrine that tariffs must now be adhered to.
3. The Commission can not lend sanction to the idea that a lower rate in effect via one line than via another line is conclusive evidence of the unreasonableness of the higher rate. *Ottumwa Bridge Co. v. C., M. & St. P. Ry. Co.*, 14 I. C. C. Rep., 125, and *Commercial Coal Co. v. B. & O. R. R. Co.*, 15 I. C. C. Rep., 11, cited and approved.
4. If reparation were granted in this case it would go far to support the theory that a carrier may not voluntarily reduce its rate without being liable for damages on all past shipments, a theory which can not be accepted by the Commission.

*P. M. Standifer* for complainant.

*Thomas J. Freeman* and *E. L. Sargent* for defendants.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The purpose of this case is to obtain an order requiring the defendants to pay complainant \$33.08 reparation on a car of yellow-pine lumber shipped August 21, 1907, via defendants' lines from Lake Charles, La., to El Paso, Tex., on which a rate of 32.5 cents per 100 pounds was charged.

It is alleged in the complaint that this rate was unjust and unreasonable for the reason that at the time this shipment moved the South-



ern Pacific Company had in effect a carload rate on lumber of 25 cents per 100 pounds between the same points. The facts are admitted, but defendant Texas & Pacific Railway Company denies that the rate was unjust or unreasonable, because the service rendered was over two lines, while the rate of the Southern Pacific was for a continuous carriage over its line alone; and defendant St. Louis, Watkins & Gulf Railway Company alleges that the Southern Pacific has a much shorter line.

It appears that the Texas & Pacific Company's tariff, I. C. C. No. 1266, effective July 24, 1905, carried a rate of 32.5 cents per 100 pounds applicable to this movement, which rate remained in effect until July 9, 1908; when it was reduced to 25 cents per 100 pounds. The Southern Pacific lines' tariff, G. H. & S. A. I. C. C. No. 551, effective April 30, 1906, named rate of 25 cents per 100 pounds on lumber via its lines from Lake Charles to El Paso. But this tariff provided that in connection with the St. Louis, Watkins & Gulf Railway the rate should be 32.5 cents. In other words, the rate via the Southern Pacific lines direct was lower than via the St. Louis, Watkins & Gulf and the Southern Pacific lines, and the rate via the St. Louis, Watkins & Gulf line was the same in connection with the Texas & Pacific or with the Southern Pacific.

The shipment moved from Lake Charles to Alexandria, La., via the St. Louis, Watkins & Gulf and from thence via the Texas & Pacific to El Paso, a total distance of 1,067 miles. The distance via the Southern Pacific is 972 miles.

At the hearing complainant proceeded on the theory that a lower rate being in effect via the Southern Pacific and the subsequent reduction of their rate by the defendants was conclusive as to the unlawfulness and unreasonableness of the rate complained of, but submitted no testimony as to the reasonableness of the rate per se.

The general freight agent of the Texas & Pacific testified that for many years his company had thought that because of the additional distance, the fact that the rate was divided between two lines, and that much business moved at this rate, it was not unreasonable, but, on solicitation of the St. Louis, Watkins & Gulf, which has a 100-mile haul to Alexandria, the rate was reduced, although the proportion of the originating carrier was not changed. In other words, the reduction in the rate is borne by the Texas & Pacific.

There is some indication in the record that the St. Louis, Watkins & Gulf-Texas & Pacific adjustment of rates to El Paso as compared with the Southern Pacific rate to the same point is unique in that it is out of line with the comparative adjustment of rates to points near El Paso, but an examination of filed tariffs shows this to be

contrary to the facts. Taking Sierra Blanca, a point common to the Texas & Pacific and the Southern Pacific, as fairly representative, we find that the same relative adjustment of rates exists, that is, that the rate by the Southern Pacific lines direct is 25 cents; by the St. Louis, Watkins & Gulf and Southern Pacific 32.5 cents, and by the St. Louis, Watkins & Gulf and the Texas & Pacific 32.5 cents.

As previously indicated, the complainant appears to consider that in view of the lower rate in effect via the Southern Pacific the rate charged on this shipment was a "straight overcharge." It appears almost unnecessary to say that carriers are prohibited from deviating from their tariff rates, notwithstanding the fact that a competing line may have a lower rate in effect. Whatever may have been the practice in the past of "meeting the rate," the act, and the decisions of the Commission interpreting its provisions, unmistakably lay down the doctrine that tariffs must now be adhered to.

The Commission can not lend sanction to the idea that a lower rate in effect via one line than via another line is conclusive evidence of the unreasonableness of the higher rate. We have said that we are unwilling to "subscribe to the theory that the voluntary reduction of a rate by a carrier conclusively shows that the former rate was unjust or unreasonable and that reparation should be granted on all shipments moving thereunder within the period of the statute of limitation." *Ottumwa Bridge Co. v. C., M. & St. P. Ry. Co.*, 14 I. C. C. Rep., 125; *Commercial Coal Co. v. B. & O. R. R. Co.*, 15 I. C. C. Rep., 11. The rate herein complained of was in force for some three years, and it is understood that many shipments moved under it. The thought naturally suggests itself that if that rate was believed to have been unreasonable the shippers paying it would have sought relief from it, but this complaint, the sole and declared object of which is to obtain reparation on a single shipment, is the only one which has been filed with the Commission bringing this rate in issue. The plea of the Texas & Pacific that if reparation were granted on this particular shipment it would be compelled, in order to prevent other shippers from being unjustly discriminated against, to make reparation to them, has no weight with the Commission. If the Commission felt that the rate charged was unjust and unreasonable and that reparation should be granted, it would so declare, regardless of whether the number of shippers who had paid such rate was large or small. All should be treated alike.

This rate is not attacked on its reasonableness in and of itself, and there is no testimony in the record on which the Commission can find it to be so. Relatively the rate via the Southern Pacific's shorter line was lower than that via the two-line haul of the defendants. For 15 I. C. C. Rep.

competitive reasons the defendants, after the 32.5-cent rate had been in effect for nearly three years, reduced it to equal that of the Southern Pacific, but whether or not the 25-cent rate is remunerative is not disclosed by the record. If reparation were granted in this case it would go far to support the theory that a carrier may not voluntarily reduce its rate without being liable for damages on all past shipments, a theory which can not be accepted by the Commission.

The complaint will be dismissed.

15 I. C. C. Rep.

No. 1636.  
J. C. BLUME & COMPANY  
v.  
WELLS FARGO & COMPANY.

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*Submitted October 18, 1908. Decided January 7, 1909.*

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1. Because of the failure of the defendant express company to make prompt delivery of a carload of fruit at the unloading station designated by the shippers, the latter were unable to take advantage of a high market but were compelled later to sell at lower prices; for the loss thus sustained they demand reparation. *Held*, That complaints for damages of that character are not cognizable by the Commission.
2. The prompt and safe carriage of goods is an obligation enforced upon carriers by the common law and not by the act to regulate commerce. Damages may be awarded by the Commission only for a violation of some provision of the act.

*J. J. Foley* for complainants.

*Charles W. Stockton* for defendant.

REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

By its motion to dismiss the complaint herein as being one that is not cognizable by the Commission, the defendant has aptly raised the question of our power to entertain a demand for reparation to cover the loss and damage sustained by a shipper by reason of the failure of the carrier promptly to deliver a shipment which it had accepted for carriage to a definite point designated by the shipper in the contract of transportation.

The facts appearing on the face of the record, and which for the purposes of such a motion are to be taken as established, may be briefly stated as follows:

On August 25, 1907, the complainants, who are produce merchants doing business in Pittsburg, Pa., delivered to the defendant express company at Rocky Ford, Colo., a carload of fruit, vegetables, or some similar commodity of a perishable nature not specifically described

15 I. C. C. Rep.

on the record, for transportation to Pittsburg and delivery there to the complainants at what is known as the produce station of the Pennsylvania Railroad Company. The car was accepted with instructions for that particular delivery. The Adams Express Company is the only express line that runs directly into that station, and in order to effect a direct delivery at that point in Pittsburg, it was necessary for the defendant company to turn the car over to the Adams Express Company at its junction with that line at Youngstown, Ohio; but instead of doing that it delivered the car at another junction to the American Express Company. It thus arrived in Pittsburg at a different unloading station from the one at which the complainants desired the delivery to be made, and before the defendant could get the car switched to the produce station of the Pennsylvania Railroad Company and thus make delivery there in accordance with its instructions, the market price for the particular commodity which the car contained had gone off so materially that the complainants were compelled to dispose of the contents of the car at a loss to them of \$437.10. For this amount with interest they pray in their petition for reparation.

Is it competent for the Commission to act upon a complaint of this nature and to award damages of this character? We have not so understood our authority under the amended act to regulate commerce. The general purpose of the act, as is fully revealed in its first five sections, was to secure just and reasonable rates; to prohibit unjust and discriminatory rates in the performance by carriers of like services under similar conditions and circumstances; to prevent undue and unreasonable preferences; to forbid a higher charge for a shorter than for a longer haul in the same direction, the shorter being contained within the longer haul; and to render unlawful all combinations among carriers for the pooling of freights. In a word, as a regulative measure, the act confers upon the Commission power and authority to enter orders only with respect to the rates and practices of carriers, and that this was its general object appears no less clearly from an analysis of the statute itself than from the public discussion that accompanied its enactment. It was not intended by the Congress that the Commission should supplant and take the place of the courts with respect to that large class of complaints that may arise out of the failure of carriers to carry out their contracts of transportation promptly and safely, and properly to perform their duties as common carriers in the handling of shipments entrusted to them for carriage from one point to another. As to all such claims, as we have had occasion frequently to say in connection with informal complaints of this character, the Commission is without authority to afford redress.

It is true that the act authorizes the Commission, after full hearing and upon complaint made, to award damages, but it is careful to restrict that authority to cases in which the carrier may be liable under the provisions of the act. The express language of section 8 is that in case of the commission or omission by the carrier of any matter or thing prohibited or required by the act, "such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act." In section 9 the provision is that the person injured "may bring suit \* \* \* for the recovery of the damages for which such common carrier may be liable under the provisions of this act." In section 16 the Commission is authorized to make an award of damages whenever, after hearing and upon complaint made, it shall find that the party complainant "is entitled to an award of damages under the provisions of this act for a violation thereof." It is a violation of the provisions of the act for a common carrier to demand and collect an unlawful or discriminatory rate, and of complaints based on such violations the Commission has full jurisdiction and may afford redress by establishing reasonable rates to govern future shipments and awarding reparation with respect to past shipments. The Commission may also require carriers to desist from unlawful preferences and otherwise regulate the rates and practices of carriers; but with respect to the performance by carriers for the shipping public of their general duties as common carriers other than those covered by the act, the Commission is wholly without authority. Breaches of duty in that respect, such as the loss of or damage to property in transit, the failure to make delivery safely and with reasonable despatch in accordance with the contract, express or implied, which a carrier enters into when accepting a shipment for carriage, are matters that are solely within the jurisdiction of the courts. The complaint here is of such a character. The damages alleged to have been sustained by the complainants did not arise out of the breach of any duty or obligation resting upon the defendant under the terms of the act to regulate commerce, but out of the breach of a duty imposed upon it by the common law promptly to deliver at a designated point a shipment which it had accepted and agreed to deliver at that point. The only recourse that shippers have with respect to such claims for damages is in the courts.

It follows therefore that the complaint must be dismissed, and it will be so ordered.

15 I. C. C. Rep.

No. 1677.  
FOSTER LUMBER COMPANY  
v.  
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted November 27, 1908. Decided January 7, 1909.*

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1. Often a wide divergence of opinion exists as to the reasonableness of a specific rate between certain points, and any policy pursued by this Commission tending to make it burdensome to carriers to reduce rates would ultimately work a hardship to the shipping public. For these reasons it would appear unwise for this Commission to adopt a policy by which, upon the voluntary reduction of a rate, a shipper who had previously paid the higher rate should recover as damages whatever difference there might be between the rate which he was compelled to pay and the rate newly established by the railroad, where application had not been made, either to the railroad or to this Commission, for a reduction of the rate prior to the time at which the railroad itself made such reduction, and where it does not clearly appear that the rate was at the time unreasonable.
2. Under the law carriers must initiate rates, and so long as they do not abuse the right conferred upon them by the statute, the Commission is not justified in penalizing them.
3. Complainant shipped a carload of lumber from Fostoria, Tex., to Melrose, N. Mex., on which it was charged 41 cents per 100 pounds. Subsequently defendants established a joint through rate of 33 cents per 100 pounds on lumber between the said points. Upon complaint seeking reparation based on the difference between these rates; *Held*, on the record, that the 41-cent rate was not so unreasonable as to warrant an order that all moneys collected thereunder should be refunded. Reparation disallowed and complaint dismissed.

*L. F. Bird* for complainant.

*D. L. Meyers* for defendants.

REPORT OF THE COMMISSION.

*LANE, Commissioner:*

On September 8, 1906, complainant shipped a carload of lumber weighing 54,400 pounds from Fostoria, Tex., to Melrose, N. Mex.,

15 I. C. C. Rep.

758 miles, at a rate of 41 cents per 100 pounds, the total charge being \$223.04. On January 7, 1907, defendants duly published and made effective a joint through rate of 33 cents between the said points. Complainant claims that at the time the shipment moved 41 cents was an unreasonable rate; that it suffered an overcharge of \$43.32, this amount being based on the difference between the 41 and the 33 cent rate. The rate between Fostoria and Melrose was made by adding the rate from Fostoria to Texico, a small station just west of the Texas-New Mexico line, to the rate from Texico to Melrose. At the time the shipment moved the rate to Texico was 33 cents and from Texico to Melrose 8 cents, thus making a combination rate of 41 cents. The Commission in this case is not required to consider the rate which shall obtain as to the future, but is asked to allow reparation upon the basis of a rate charged which is alleged to have been unreasonable and which has since been reduced. This proceeding was brought after the reduction of the rate by the railroad, and no petition was made by the shipper either to the railroad or to this Commission for the reduction of the rate at the time the 41-cent rate was charged or subsequent thereto.

It must be apparent that it is to the interest of the shipping public in nowise to embarrass carriers in decreasing rates when they think such decrease equitable. Under existing standards, all will admit that there can be a wide divergence of opinion as to what a reasonable rate between two points may be, and any policy pursued by this Commission tending to make it burdensome to the carriers to reduce a rate would in the end work a hardship to shippers. For these reasons it would appear unwise for this Commission to adopt a policy by which, upon the voluntary reduction of a rate, a shipper who had previously paid the higher rate should recover as damages whatever difference there might be between the rate which he was compelled to pay and the rate newly established by the railroad, where application had not been made either to the railroad or to the Commission for a reduction of the rate prior to the time at which the railroad itself made such reduction and where it does not clearly appear that the rate was at the time unreasonable. The presumption does not necessarily arise because a reduction is made by a railroad that the rate previously existing was unreasonable under the conditions and circumstances then obtaining. Any other theory than this would compel us to the absurd conclusion that for an indeterminate period, perhaps barred only by the statute of limitation within the act, a shipper would be entitled to a progressive series of awards of reparation depending upon the number of reductions which the railroad made. For instance, if the carriers in this case should again voluntarily reduce the rate between Fostoria and Melrose, say from 33 to 28



cents, and again from 28 cents to 23 cents, we would be required under such construction of the law to award damages on all shipments made within the statute down to the 23-cent rate. Under the law carriers must initiate rates, and so long as they do not abuse the right conferred upon them by the statute the Commission is not justified in penalizing them. Although 33 cents in this case may be a more reasonable rate than 41 cents for the haul involved, yet no one could say that 41 cents was so unreasonable or unjust as to warrant an order that all moneys collected thereunder should be refunded.

The circumstances of this case seem to justify no other conclusion than that the complaint should be dismissed.

15 I. C. C. Rep.

No. 1695.  
**GREEN BAY BUSINESS MEN'S ASSOCIATION**  
 v.  
**BALTIMORE & OHIO RAILROAD COMPANY ET AL.**

*Submitted December 5, 1908. Decided January 9, 1909.*

1. Rates from eastern territory to Green Bay, Wis., may properly be higher than the Chicago scale. The basis now in effect, which is about 107 per cent of Chicago, not found unlawful.
2. This Commission has often held that the long maintenance of a given rate is an admission of the reasonableness of that rate. It has also held that where, upon the strength of a given rate, capital has been invested and industrial conditions have become established, this rate can not be discontinued without taking into account its effect upon these commercial and industrial conditions. But it has never been said that there was any absolute rule requiring for any reason the indefinite continuance of such a rate. It is always a question of what, under all the circumstances, is just and reasonable.

*Wigman, Martin & Martin, R. L. Varney, and Frank A. Larish* for complainant.

*O. E. Butterfield and Clyde Brown* for New York Central Lines.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*S. A. Lynde* for Chicago & Northwestern Railway Company.

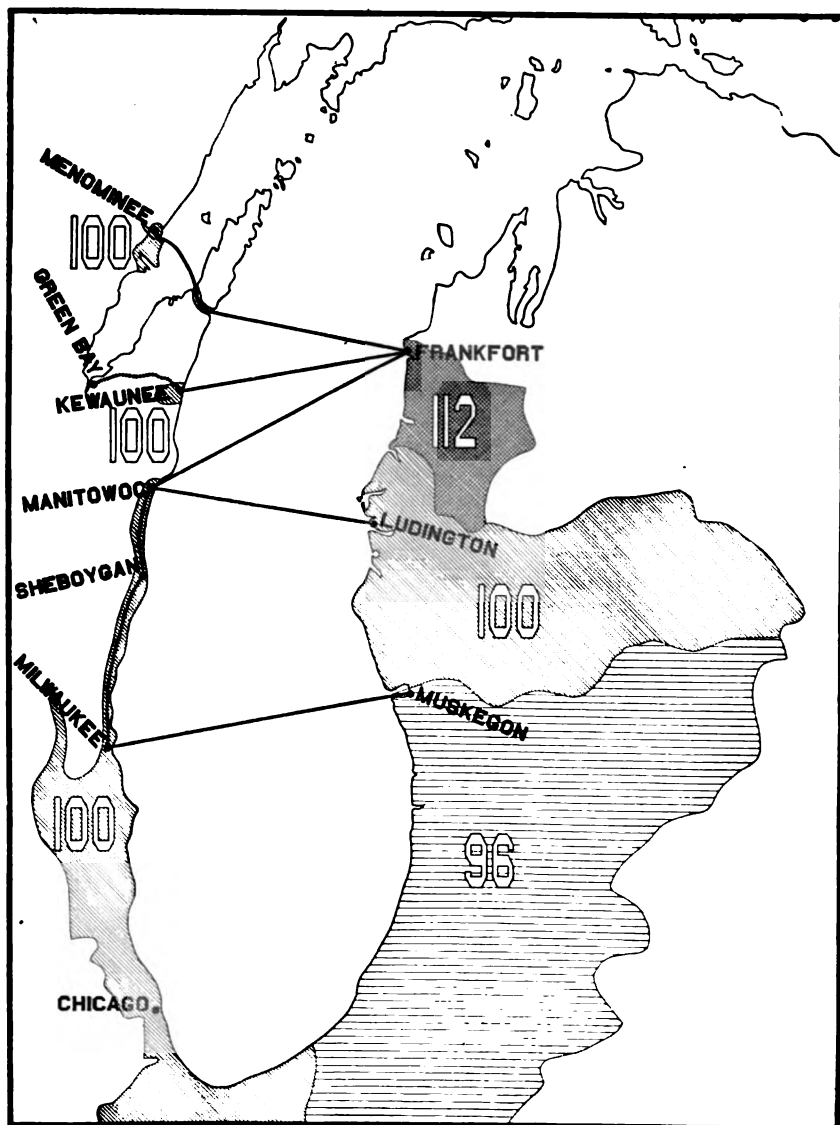
**REPORT OF THE COMMISSION.**

**PROUTY, Commissioner:**

It is well understood that freight rates between the Atlantic seaboard and points west of the Buffalo-Pittsburg line up to the Mississippi River are generally made in groups upon a percentage basis, the rate from New York to Chicago being 100 per cent. The business interests of Green Bay, Wis., insist in this proceeding that that city is entitled to be treated as a 100 per cent point.

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A map is given below showing in outline the location of Green Bay. By consulting this it will be observed that an extensive bay makes down from the upper end of Lake Michigan upon the western side something like 100 miles, at the extremity of which is located



the city of Green Bay. The water in this bay is of ample depth to permit easy navigation by vessels of any draft navigating the Great Lakes, and the dockage facilities at Green Bay itself are excellent. No other city of considerable size is located upon the shores of this bay.

There is no connection between the bay and Lake Michigan after entering at its mouth by which large vessels can pass from the bay into the lake. A canal runs from Lake Michigan into Green Bay at Sturgeon Bay, but it is not of sufficient depth to permit the passage of lake steamers. Hence a vessel en route from Buffalo to Chicago, in order to touch at Green Bay, must sail the full length of the bay and back again, a distance of some 200 miles. In point of fact no lake steamers reaching Milwaukee or Chicago touch at Green Bay.

Until the close of the season of 1905 a line of steamers did ply between Buffalo and Green Bay, and via this line rail-and-lake rates were maintained between Atlantic seaboard territory and Green Bay, which were the same as those to Milwaukee and Chicago. Beginning with the year 1906 this line was discontinued, owing to financial difficulties, and Green Bay enjoyed during that season no direct water connection with the east. Its business men thereupon persuaded the Mutual Transit Company to operate its steamers between Buffalo and Green Bay, guaranteeing a cargo of at least 500 tons each trip. This service has been maintained during the seasons of 1907 and 1908. It does not appear certain whether it will be continued for the future.

The rates by this line have not been quite as favorable as the Chicago and Milwaukee basis, having been 64½ cents first class, as against 62 cents to those points.

The complainant alleges that Green Bay is discriminated against for the reason that certain other points are given the 100 per cent rate which is denied to Green Bay, these points being Chicago, Ill., Milwaukee, Manitowoc, Sheboygan, and Kewaunee, Wis., and Menominee, Mich.

It will be seen that all these cities are located upon the western shore of Lake Michigan, with the exception of Menominee, which is upon the western side of Green Bay. Lines of railroad reach various points upon the eastern side of Lake Michigan, like Grand Haven and Ludington, from which car ferries are maintained across Lake Michigan to points upon the western shore by which freight is transported usually in the car itself and without breaking bulk to such points. Car ferries are operated in this manner to Milwaukee, Manitowoc, Kewaunee, and Menominee. That to Menominee passes through the Sturgeon Gulf Canal into Green Bay and so across. No car ferry is maintained to Sheboygan, but a line of railroad does operate between Manitowoc and Milwaukee, upon which Sheboygan is an intermediate point; and this line, in order that no higher rate may apply at an intermediate point, makes the same rate to Sheboygan which is made to Milwaukee and Manitowoc.

An examination of the percentage map will show that territory on the eastern shore of Lake Michigan due east of Green Bay takes the 15 I. C. C. Rep.

100 and 112 per cent rate. Traffic in order to reach Green Bay via car ferry, which is the short line and the line which makes the rate, must pass across Lake Michigan to Kewaunee where it is taken off the float and transported for a distance of 37 miles by the Kewaunee, Green Bay & Western Railroad.

It is difficult to see just how, in view of its location, Green Bay can claim that it is discriminated against in favor of these other cities. These towns take the 100 per cent basis because lines reaching the east-shore of Lake Michigan and operating car ferries across Lake Michigan have seen fit to extend that rate to them. In every case, except Sheboygan, these towns which are referred to by the complainant are reached by a car ferry. Sheboygan, as we have seen, is intermediate.

The town of Two Rivers, situated just above Manitowoc, is accorded the 100 per cent rate, although neither an intermediate point nor the terminus of a car ferry; but it is a place of no considerable size, and the complainant attaches no importance to the fact that this locality happens to be so favored.

Green Bay insists that it should be given the 100 per cent rate because it is a deep-water port on Lake Michigan and because no other deep-water port pays more than this rate. But Menominee, Sheboygan, and Manitowoc do not receive this rate because they are deep-water ports, but rather because they are so situated that they have the benefit of these car ferries. During the season of open navigation the first class rate from New York to Green Bay is 64½ cents; while the first class rate to Sheboygan, Manitowoc, Kewaunee, and Menominee is 75 cents. Although these towns may have deep-water navigation, they do not obtain the deep-water rate. In this particular Green Bay has the advantage over these other localities, for the reason probably that its business is sufficient to command a water service which these other towns can not. During seven months in the year its rate, first class, from the east is 10½ cents better than that of its rivals. This is a competitive advantage to which that city is entitled because it can obtain it by virtue of its size and location. In the same way Menominee, Sheboygan, and Manitowoc enjoy an advantage over Green Bay during the remainder of the year because their location is such that they can obtain it.

It is said that Green Bay is at a disadvantage as a wholesale or jobbing point, since it must pay a higher transportation charge upon its supplies. Certainly to the extent that the wholesaler draws his supplies from the east he must pay a somewhat higher rate than Milwaukee or Manitowoc, but it does not follow from this that he is at any unfair disadvantage in the freight rate. His location is such that the distance from his warehouse to the retailer may be less than in the case of these other towns, so that the combined freight rate with respect to much territory is less in the case of Green Bay than in

the case of Milwaukee. It does not seem probable that, taking the rate in and the rate out, Green Bay is at a disadvantage in any territory where it might fairly expect to operate as to any of its competitors except Menominee, the peculiar location of that town in connection with the Sturgeon Bay Canal giving it a better combination freight rate than Green Bay.

The testimony in this case also shows that some manufacturers have declined to locate at Green Bay for the reason that the freight rate was somewhat higher than from other points, like Milwaukee, Manitowoc, or Sheboygan. It can not be denied that the manufacturer who sells his product in the east must, if he ships it by rail, pay a somewhat higher rate from Green Bay than from those other points. During the period of open navigation he obtains to eastern destinations a rate substantially less, but during the winter months his transportation charge is higher. And why should it not be? The distance is greater, the cost of the service is greater—the rate may properly be greater.

If this question were presented to the Commission as an abstract proposition for the first time we should find no ground for including Green Bay in 100 per cent territory. The extension of that rate to any of these towns upon the west shore of Lake Michigan is a forced one. If we were to carry it inland to Green Bay there is no apparent reason why it must not also be applied at Fond du Lac and much other interior territory distant no farther from the shore.

The testimony in this case shows that for twelve years, from 1890 until 1902, Green Bay was a 100 per cent point, and the complainant insists that not only is this a well-nigh conclusive admission that it ought to be such point to-day, but also that, having maintained that system of rates and having induced the investment of capital at Green Bay by this means, these railroads ought not now to be allowed to withdraw it.

While it appears clear that Green Bay did during the above period enjoy via some lines the 100 per cent rate, it is not equally certain by what lines that rate applied. It seems to have been first established by the Canadian Pacific through Pembine, Wis., in connection with the Chicago, Milwaukee & St. Paul Railway. The Kewaunee, Green Bay & Western at once met this rate via the car ferry reaching Kewaunee, and other car-ferry lines seem to have soon done the same. It was not until 1901 that all-rail lines established this rate, and it was finally withdrawn in 1902. It seems certain that during this period Green Bay enjoyed the Chicago rate, and that some of these defendants during the larger part of that period participated in the rate.

This Commission has often held that the long maintenance of a given rate is an admission of the reasonableness of that rate. It has

also held that where, upon the strength of a given rate, capital has been invested and industrial conditions have become established, this rate can not be discontinued without taking into account its effect upon these commercial and industrial conditions, but it has never said that there was any absolute rule requiring for any reason the indefinite continuance of such a rate. It is always a question of what, under all the circumstances, is just and reasonable.

If it could be shown here that some industry had been established at this point upon the strength of this adjustment of rates and that the existence of that industry as a profitable venture was destroyed by this change, a different case would be presented; but such is not at all the import of the testimony before us.

All the witnesses who testified began business at Green Bay long before it was made a 100 per cent point. Their business had been profitable before, was during, and has been since, the 100 per cent period. Those of them who were wholesale merchants testified that in order to reach the same territory to-day they find it necessary to somewhat shrink their profits, and this in the very nature of things must be the case to the extent that they draw their supplies from the east by rail. In competition with Manitowoc and Menominee, they are still at an advantage during the season as a whole, since their summer rates are much lower than those of their competitors. One witness was the proprietor of a grain elevator which had been erected at Green Bay many years before it was made a 100 per cent point. It does not appear that his business suffers any serious inconvenience by reason of the advance, since it is entirely conducted upon a transit rate which is the same via Green Bay or Manitowoc and which was in no respect changed when Green Bay was advanced. It does appear that grain can not be loaded into Green Bay and sent out again upon the Green Bay rate to eastern destinations from some localities as cheaply as it can be sent through Manitowoc, but in this case the distance via Green Bay from point of origin is usually, if not always, greater than via Manitowoc, and the rate probably ought to be higher.

While the imposition of the higher rate has certainly placed a burden upon Green Bay over and above that resting upon it when it had the lower rate we do not feel that it is an unjust burden, and we do not feel that the existence for twelve years of the lower rate as it was maintained created a condition of things which rendered its advance unjust and unreasonable.

Our conclusion is therefore that rates from eastern territory to Green Bay may properly be higher than the Chicago scale. Nor do we think that the basis now in effect, which, on the whole, is about 107 per cent of Chicago, is unlawful.

The complaint will be dismissed.

No. 1558.

C. H. GODFREY &amp; SON

v.

TEXAS, ARKANSAS & LOUISIANA RAILWAY COMPANY  
ET AL.

No. 1568.

SAME

v.

TEXAS, ARKANSAS & LOUISIANA RAILWAY COMPANY  
ET AL.

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*Submitted November 4, 1908. Decided January 9, 1909.*

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Class rates of 75 cents and 82 cents per 100 pounds, applied by defendants on shipments of canned peaches from Atlanta, Tex., to Kansas City and Chicago, respectively, were excessive and ought not to have exceeded the present commodity rates of 51 cents per 100 pounds to Kansas City and 58 cents to Chicago. Reparation awarded on that basis with interest at 6 per cent, and defendants required to maintain the lower rates for a period of two years.

*C. H. Godfrey* for complainants.

*S. W. Moore* and *Fred. H. Wood* for Kansas City Southern Railway Company.

*Winston, Payne, Strawn & Shaw* for Chicago & Alton Railroad Company.

#### REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

These two complaints involve a demand for reparation on 3 carloads of canned peaches shipped by the complainants from Atlanta, in the state of Texas, during the month of August, 1907, 2 of the cars being destined to Chicago and 1 to Kansas City. The claim is based upon the alleged unreasonableness of the rates then in effect over the lines of the defendants.



Atlanta is reached by the Texas & Pacific Railway, which, with its various connections, offers local shippers through routes and joint through rates both to Chicago and to Kansas City. It is also on the line of the Texas, Arkansas & Louisiana Railway. This road, only 9 miles in length, is owned by the merchants of Atlanta and is operated by them in the general interest of that community. In connection with the defendant the Kansas City Southern Railway, it maintains through routes and offers joint through rates to Kansas City; and in connection with the same line and with the defendant, the Chicago & Alton Railroad, through routes and joint through rates are available also to Chicago. At the time the shipments in question moved, the lawfully published rate on canned peaches in carloads, when shipped over the Texas & Pacific Railway and its connections to Chicago, was 61 cents per 100 pounds; the rate over the same route to Kansas City was 58 cents per 100 pounds. These were commodity rates. The complainants had intended to forward their shipments over that route, but yielding to the solicitations of the representatives of the Texas, Arkansas & Louisiana Railway they sent them forward to destination over the route of which the last-named line is the initial carrier. Its agents had assured the complainants, and they doubtless so believed at the time, that the rates to Chicago and to Kansas City were the same over that route as over the other route. It afterwards developed however that this was an error. The result was that the complainants were compelled to pay class rates that were materially higher, no through commodity rates being in effect over the defendants' lines. On the 2 carloads consigned to Chicago, one weighing 47,400 pounds, and the other 56,219 pounds, the freight charges on the basis of the class rate of 82 cents per 100 pounds aggregated \$388.68 and \$461, respectively. According to the record, however, the amount actually collected on the first of these 2 cars was \$387.82, an undercharge unexplained on the record amounting to 86 cents. The weight of the carload consigned to Kansas City was 40,100 pounds, and the freight charges, based on the class rate to that point of 75 cents per 100 pounds, amounted to \$300.75.

In their petitions the complainants assail the reasonableness of these rates and ask for an order requiring the defendant lines to establish a commodity rate on canned peaches from Atlanta to Chicago of 54 cents per 100 pounds, and a rate of 50 cents per 100 pounds to Kansas City. They also demand reparation on that basis on the 3 carloads shipped to those destinations as above explained.

Following the lead of the Texas & Pacific Railway, which is the direct line into Atlanta, the defendants have made, and now have in effect, a rate of 58 cents to Chicago and a rate of 51 cents per 100 pounds to Kansas City. And on that basis they are

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willing to make reparation. They had not participated in the movement of any canned goods from Atlanta prior to the date of these shipments and were not aware that any such traffic originated there. They had not therefore established appropriate rates for such movements, and consequently were compelled to apply the class rates, which they now admit to have been unreasonable. The defendants contend, however, that the present commodity rates are reasonable and that no lower rates should be required to be made effective by an order of the Commission. The complainants on the other hand do not concede the reasonableness of the present rates, but demand that the lower rates above mentioned shall be made effective. This demand was supported by no proof at the hearing except a reference to rates on canned goods in other quarters of the country where the traffic conditions are not the same, and to rates in other territories on potatoes, lumber, salt, molasses, soap, paints, and other products, none of which comparisons in our judgment tend to throw any light on the issue. Beyond the fact that the defendants for a short time since the movement in question had maintained lower rates no other suggestion was offered by the complainants in support of their petitions, except that the present rates of 58 cents and 51 cents to Chicago and Kansas City, respectively, extend to other points in Texas, some of which involve hauls of not less than 400 miles in excess of the hauls from Atlanta to the destinations in question. This was the point most urged upon our attention at the hearing. Not being familiar with the rate system that has long been applicable to and from Texas common points, the complainants insist that the rates from Atlanta to the destinations in question should be materially less than the rates on canned goods from the more distant points in Texas; but the Texas rate system has been fully discussed by the Commission in other proceedings and requires no further explanation here. *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C. Rep., 427.

Upon a consideration of the whole record, we find that the rates actually charged on these 3 carloads were excessive and unreasonable, and should not have exceeded the present rates; and that the complainants are entitled to reparation on the basis of the present rates, which the defendants will be required to maintain for the usual period of time. We do not find, however, that there is any such showing by the complainants as will justify a finding that the present rates on canned goods to Chicago and Kansas City are excessive.

An order will be entered giving effect to these views, and will include interest on the award at 6 per cent from the date of the payment of the charges in question.

15 I. C. C. Rep.

No. 1619.

GRAND RAPIDS PLASTER COMPANY

v.

PERE MARQUETTE RAILROAD COMPANY ET AL.

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Submitted September 16, 1908. Decided January 5, 1909.

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Complainant shipped 2 carloads of plaster from Grand Rapids, Mich., via Milwaukee, Wis., to Houghton, Mich., for which it was charged a rate of 20 cents per 100 pounds. When the shipments were made the initial carrier had a published rate on plaster between said points of  $16\frac{1}{2}$  cents per 100 pounds, but at the date of shipments the delivering carrier had not concurred in the  $16\frac{1}{2}$ -cent rate. Subsequently the  $16\frac{1}{2}$ -cent rate was made the legal rate over the route taken; *Held*, That the 20-cent rate was unjust and unreasonable, and that the  $16\frac{1}{2}$ -cent rate would be a just and reasonable rate for the future. Reparation awarded.

*Stewart E. Knappen* for complainant.

*R. P. Paterson* for Pere Marquette Railroad Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*F. R. Bolles* for Copper Range Railroad Company.

#### REPORT OF THE COMMISSION.

*COCKRELL, Commissioner:*

The complainant shipped from Grand Rapids, Mich., to Houghton Mich., over the Pere Marquette Railroad and its car ferry to Milwaukee, Wis., thence over the Chicago, Milwaukee & St. Paul Railway to Mass City, Mich., and thence over the Copper Range Railroad to Houghton, Mich., 2 carloads of plaster, each weighing 60,000 pounds, and paid thereon charges at the rate of 20 cents per 100 pounds, aggregating \$240; that when the shipments were made the complainant relied upon paying only  $16\frac{1}{2}$  cents per 100 pounds by reason of I. C. C. No. 1522 tariff filed by the Pere Marquette Railroad Company with the Interstate Commerce Commission, making a rate of  $16\frac{1}{2}$  cents per 100 pounds from Grand Rapids, Mich., to Houghton, Mich.; that when the shipments were completed and the expense bills presented the Copper Range Railroad demanded and received 20 cents per 100 pounds on the ground that it was not named in said tariff as concurring therein; and complainant charges that the said rate of 20

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cents per 100 pounds is unreasonable and excessive and demands reparation for all the charges over and above  $16\frac{1}{2}$  cents, viz, \$42.

The Copper Range Railroad answered that when these shipments were made it was unable to locate a better rate than 20 cents per 100 pounds from Grand Rapids, Mich., to Houghton, Mich., although it was aware of the  $16\frac{1}{2}$ -cent rate published in Pere Marquette tariff, which was not so published as to be applicable by their line, although it appeared as a party to the tariff; and that as soon as notified this company amended its tariff to permit routing by its line at  $16\frac{1}{2}$  cents, effective June 27, 1908.

The Pere Marquette Railroad Company answered, admitting all the material averments in the petition, and states that the defendant, the Copper Range Railroad Company, has since been added to the tariff mentioned in the petition, being I. C. C. tariff No. 1522.

The Pere Marquette Railroad Company admitted that the rate charged, 20 cents per 100 pounds, was unjust and unreasonable, and was not the  $16\frac{1}{2}$ -cent rate which was intended to be charged and which would be a reasonable rate, and that as soon as the Copper Range Railroad called its attention to the charge that had been made, it had the schedule so corrected as to make the  $16\frac{1}{2}$ -cent rate applicable on and after June 27, 1908, over the route the shipment moved.

The schedules of rates, fares, and charges on file with the Commission show that the combination rate over the route these shipments moved was  $7\frac{1}{2}$  cents per 100 pounds from Grand Rapids to Milwaukee via the car ferry (I. C. C., No. 1522) and 13 cents Milwaukee to Houghton, Chicago, Milwaukee & St. Paul Railway via Mass City, Mich. (I. C. C. No. A-9563), making through rate of  $20\frac{1}{2}$  cents; and further show that at the time shipments moved the Pere Marquette Railroad Company had a through commodity rate on plaster, C. L., from Grand Rapids, Mich., to Houghton, Mich., of  $16\frac{1}{2}$  cents per 100 pounds in connection with the Chicago, Milwaukee & St. Paul Railway, Duluth, South Shore & Atlantic Railway, specific routing not shown as per Pere Marquette, I. C. C. No. 1522, and misrouted the shipments and thereby caused the complainant to pay an overcharge of \$42 on said two shipments.

Our conclusions are that the rate of 20 cents per 100 pounds charged was unjust and unreasonable and that the defendant, the Pere Marquette Railroad Company, in misrouting said shipments caused the complainant to pay \$42 more than the duly published through commodity rate of  $16\frac{1}{2}$  cents per 100 pounds and is responsible therefor and should make reparation to the complainant in said sum. The complaint should be dismissed as to the other defendants.

An order will be issued accordingly.

15 I. C. C. Rep.

No. 1532.  
NORTH BROTHERS  
v.  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted July 3, 1908. Decided January 9, 1909.*

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Class rates charged by defendants subsequent to June 30, 1907, for the transportation of hay from Kansas City, Mo., to Mississippi River points and points east found unjust and unreasonable. These rates ought not to have exceeded the proportional commodity rates in effect prior to said date. Reparation awarded.

*C. W. Durbin* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*E. B. Peirce* for Chicago, Rock Island & Pacific Railway Company.

*Hale Holden* for Chicago, Burlington & Quincy Railroad Company.

*N. S. Brown* for Wabash Railroad Company.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

The complainant is a partnership composed of W. H. North and John North, doing business in Kansas City, Mo., under the firm name of North Brothers. The partnership claims to recover of the defendants, by reason of certain alleged excessive charges imposed for the transportation of hay from Kansas City to the Mississippi River and points east.

Prior to June 30, 1907, there had been in effect for several years commodity rates upon hay over the lines of the defendants from Kansas City, as follows: To Mississippi River points, 12½ cents; Peoria rate points, 15 cents; Chicago rate points, 17½ cents.

These were proportional commodity rates filed by the Western Trunk Line Committee in behalf of the defendants.

Effective June 30, 1907, these rates were canceled and as a result the regular class rates filed by the individual lines became effective. These were, in all cases: To Mississippi River points, 17 cents; Peoria rate points, 19½ cents; Chicago rate points, 22 cents.

15 I. C. C. Rep.

Since June 30 the Western Trunk Line Committee has not published rates upon hay for the defendant lines, but the several defendants did restore the original commodity proportional rates by individual tariffs, effective as follows: Chicago, Burlington & Quincy, July 24, 1907; Wabash Railroad, August 23, 1907; Chicago, Milwaukee & St. Paul, September 9, 1907.

The Chicago, Rock Island & Pacific Railway did not restore the original proportional commodity rates, but did, on July 10, 1908, publish the following rates: To Mississippi River points, 15 cents; Peoria and Peoria points, 17½ cents; Chicago and Chicago points, 20 cents.

The complainant claims that the class rates charged between June 30, 1907, and the various dates when the proportional commodity rates were restored were excessive. This was admitted by the Chicago, Burlington & Quincy Railroad Company and denied by the others. No testimony was introduced upon the hearing except what was necessary to establish the facts above recited.

We are of the opinion and find that the class rates charged subsequent to June 30, as above, were unjust and unreasonable; that the rates ought not to have exceeded the proportional commodity rates in effect prior to June 30, 1907, and that the complainant should recover as reparation the difference between the sums paid by it to the various defendants for the transportation of hay over their respective lines and what would have been paid at the above proportional commodity rates.

In reaching this conclusion we should not be understood as holding that a railroad must under all circumstances meet the rate of its competitor; but in the present case the fact that all these defendants for a considerable time maintained these proportional rates; that all of them, except the Rock Island, have since restored those rates; that the cost of the service upon the Rock Island is apparently no greater than upon the other lines, are facts strongly tending to show that those rates are reasonable. The Rock Island system was represented upon the hearing and gave no reason for its action in declining to restore the old proportional rates which were reestablished by its competitors.

We find that during this period the complainant shipped over the Chicago, Rock Island & Pacific 4 carloads of hay, upon which it paid, at the higher rates, charges aggregating \$176.16; that these charges, at the rates found to be reasonable, would have aggregated \$135.53, resulting in an excessive charge of \$40.63.

We find that the complainant shipped during this interval over the line of the Chicago, Milwaukee & St. Paul 2 carloads of hay, upon which it paid, at the higher rates, charges aggregating \$83.60;

that these charges would have been, at the rates found to be reasonable, \$66.50, and that the complainant has therefore been forced to pay unreasonable charges by the amount of \$17.10.

We find that the complainant shipped over the line of the Chicago, Burlington & Quincy 13 carloads of hay, upon which it paid aggregate charges amounting to \$439.75; that these charges, at the rates found to be reasonable, should have aggregated \$346.02, resulting in an excessive charge of \$93.73.

We find that the complainant shipped over the Wabash Railroad 1 carload, weighing 24,600 pounds, upon which it paid aggregate charges of \$47.97; that these charges, at the rate found to be reasonable, should have been \$36.90, an excessive charge of \$11.07.

We therefore find that the complainant is entitled to recover of the various defendants as follows: Chicago, Rock Island & Pacific, \$40.63; Chicago, Milwaukee & St. Paul, \$17.10; Chicago, Burlington & Quincy, \$93.73; Wabash Railroad, \$11.07, with interest from September 1, 1907, in all cases.

The Commission is further of the opinion that the rates now in force upon the line of the Chicago, Rock Island & Pacific from Kansas City to the points above named are excessive and that they ought not to exceed for the future the following: To Mississippi River points, 12½ cents; Peoria and Peoria points, 15 cents; Chicago and Chicago points, 17½ cents.

An order will be issued directing the various defendants to pay to the complainant the above sums and also directing the Chicago, Rock Island & Pacific Railway to establish rates for the future not exceeding those found to be reasonable, which may be established as proportional commodity rates if that defendant so elects and the other defendants to maintain for two years their present rates.

15 I. C. C. Rep.

No. 1516.

CEDAR HILL COAL &amp; COKE COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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Submitted September 14, 1908. Decided January 9, 1909.

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1. It appears that a purchaser of coal from the Victor Fuel Company at its mines upon the Colorado & Southeastern Railway for points of consumption upon the Santa Fe has the benefit of the Trinidad rate, while coal from mines of complainants near Ludlow, in the same district, for the same destinations, must pay 40 cents above the Trinidad rate; it also appears that the Colorado Fuel & Iron Company ships coal from its mines on the Colorado & Wyoming Railway to points on the Santa Fe at the Trinidad rate; and that the Victor Fuel Company owns the Colorado & Southeastern Railway, and the Colorado Fuel & Iron Company owns the Colorado & Wyoming Railway. Complainants, who are engaged in mining coal in the Trinidad district, in Colorado, near Ludlow, on the Colorado & Southern Railway, claim that defendants unduly discriminate against them in favor of the other coal companies mentioned; *Held*, That the arrangements entered into between these railroads work an undue prejudice against the mines of complainants and give unlawful preference to their said competitors.
2. Railroads should not be allowed to so divide and diversify themselves by contract and traffic agreements as to work a practical discrimination. So long as there is identity of ownership in the agency of transportation and the thing transported it is extremely difficult, if not impossible, to prevent discrimination between shippers.
3. The present rate of 40 cents per ton from the mines of complainants to Trinidad, when the coal is for points upon the Santa Fe, is excessive, and should not for the future exceed 25 cents. The Santa Fe should, by proper tariff provision, apply to this coal when received from the Colorado & Southern at Trinidad a rate of 10 cents per ton less than the local Trinidad rate.

*C. W. Durbin* for complainants.

*Robert Dunlap, James L. Coleman, and T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*E. E. Whitted* for Colorado & Southern Railway Company.

#### REPORT OF THE COMMISSION.

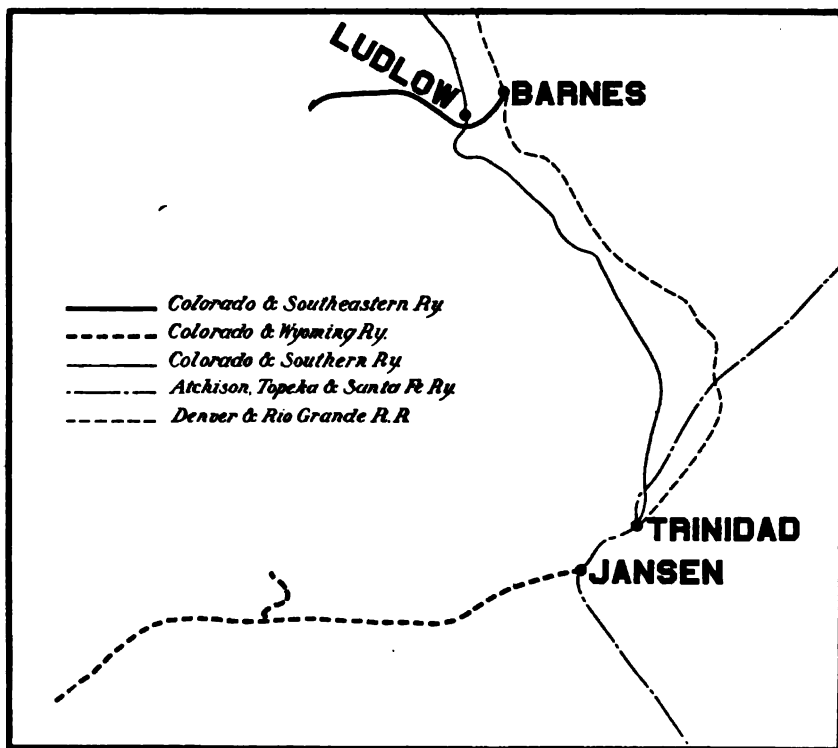
**PROUTY, Commissioner:**

The complainants, who are engaged in mining coal in what is known as the Trinidad district in Colorado, claim that the defendants  
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discriminate against them in favor of the Victor Fuel Company and the Colorado Fuel & Iron Company, who are also engaged in mining coal in the same district. The exact nature of the controversy can be best understood by a statement of the facts in connection with the map below.

Ludlow is situated upon the Colorado & Southern, about 15 miles northwest of Trinidad. The mines of the complainants are reached by short spurs from the main line of the Colorado & Southern, one about 1.37 miles and the other 0.94 of a mile in length. The complainants' coal would apparently reach the line of the Colorado &



Southern at Ludlow, and when destined for points upon the Atchison, Topeka & Santa Fe would be transported by the Colorado & Southern from Ludlow to Trinidad. The rate of the Colorado & Southern, when the coal is for local consumption at Trinidad, is 65 cents per ton from the mines of the complainants; when for points upon the Atchison, Topeka & Santa Fe, 40 cents per ton is charged.

The Colorado & Southeastern Railway is a short line about 6½ miles long, extending in a westerly direction from Barnes, upon the Denver & Rio Grande, across the Colorado & Southern at Ludlow. The Victor Fuel Company, which owns and operates mines located at

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various points along the line of this railroad, also owns all or practically all of the capital stock of the railroad corporation, but the property itself is operated as an independent proposition. When coal mined upon this road is intended for points upon the Atchison, Topeka & Santa Fe, it is transported over the Colorado & Southeastern to Ludlow, and thence over the Colorado & Southern to Trinidad.

The Colorado & Southeastern has trackage rights over the iron of the Colorado & Southern from Ludlow to Trinidad, under contract entered into in 1904, by virtue of which it can handle coal and other traffic between Ludlow and Trinidad when intended for points upon the Santa Fe. It can not engage in local business between Ludlow and Trinidad, nor receive traffic between those points when intended either for points upon its own line or for points upon the Santa Fe, except, apparently, supplies for its own consumption. This contract appears to be a bona fide one, and is based upon an adequate consideration.

The Colorado & Southeastern publishes joint rates on coal in connection with the Santa Fe from points upon the Colorado & Southeastern to points upon the Santa Fe, which are in all cases the same as those of the Santa Fe from Trinidad.

It will be seen, therefore, that one purchasing coal of the Victor Fuel Company at its mines upon the Colorado & Southeastern for points of consumption upon the Santa Fe has the benefit of the Trinidad rate, while coal from the mines of the complainants near Ludlow, for the same destinations, must pay 40 cents above the Trinidad rate.

The coal is actually moved from the point upon the Colorado & Southeastern to Trinidad by the locomotives and train crews of the Colorado & Southeastern, the cars being furnished by the Santa Fe. The Santa Fe allows to the Colorado & Southeastern 10 cents per ton as a division of the through rate.

The Colorado & Wyoming Railway is owned by the Colorado Fuel & Iron Company in the same manner that the Colorado & Southeastern is owned by the Victor Fuel Company. It is about 37 miles long and connects with the Santa Fe at Jansen, a short distance southwest of Trinidad. The Colorado Fuel & Iron Company operates several mines upon the line of the Colorado & Wyoming, and the coal produced at these mines is disposed of to some extent at points upon the Atchison, Topeka & Santa Fe. Joint rates are established by the Colorado & Wyoming and the Santa Fe from points upon the former to points upon the latter, which are in all cases the same as those from Trinidad. The coal is transported by the Colorado & Wyoming to Jansen, where it is received by the Santa Fe, which allows in this case also a division of 10 cents per ton.

It appears that the motive power of the Colorado & Wyoming is the property of that road, but that the cars are generally furnished by the Santa Fe.

The evidence shows that in case of both the Colorado & Southeastern and the Colorado & Wyoming 10 cents per ton just about pays for the handling of this coal traffic, including, as we understand the testimony, a fair interest charge upon the cost of the properties. The Santa Fe appears to have other joint rates with the Colorado & Wyoming, but the amount of business handled under them is extremely small. The division of 10 cents per ton allowed to both these roads is less than would ordinarily be regarded as a reasonable one.

The quality of coal mined by the complainants is the same in all respects as that mined by the Victor Fuel Company upon the Colorado & Southeastern, and by the Colorado Fuel & Iron Company upon the Colorado & Wyoming. The rate to points upon the Santa Fe is 40 cents higher from the mines of the complainants than from those of the Victor Fuel Company and the Colorado Fuel & Iron Company, and the effect of this higher rate has been to practically exclude the complainants from all points upon the Atchison, Topeka & Santa Fe.

The Colorado & Wyoming is a railroad, operated as such, originating large quantities of this coal traffic. The Santa Fe joins with it in naming a through rate to various points upon its line. That rate is the Trinidad rate and out of this the Santa Fe allows the Colorado & Wyoming a division of 10 cents per ton. It receives therefore for the handling of this business, which is delivered to it in considerable quantities at Trinidad, only 10 cents less than it charges for business originated by it upon mines on its own line in that vicinity. This arrangement is not certainly unduly favorable to the Colorado & Wyoming Railroad or the Colorado Fuel & Iron Company, which owns that railroad.

The Santa Fe does not, as we understand the testimony, establish joint rates with the Colorado & Southern to points of destination upon its line; nor does it make any reduction in rate in case of coal received from the Colorado & Southern at Trinidad for shipment to points upon its line. The coal of the complainants pays from Trinidad the full local rate. Inasmuch as the Colorado Fuel & Iron Company owns both the railroad and the coal mine, this would apparently amount to a discrimination of 10 cents per ton in favor of the Colorado Fuel & Iron Company as against the complainants, and so far as we can see that is the only discrimination in the case of these mines upon the Colorado & Wyoming.

The matter stands somewhat differently in case of the Colorado & Southeastern. This line has no tracks of its own from Ludlow to Trinidad, but uses the iron of the Colorado & Southern. Its right to use the line of that railroad is confined to through business, and

the only purpose of the contract is to put the Colorado & Southeastern into connection with the Santa Fe so that a through rate may be named from points upon the Colorado & Southeastern to points upon the Santa Fe. We think that this is legitimate; that the Colorado & Southeastern might, instead of building a line of its own from Ludlow to Trinidad, contract with the Colorado & Southern for the use of its tracks, and that to every intent it may publish tariffs in connection with the Santa Fe, in the same manner as though its own line actually extended from Ludlow to Trinidad. It has for the purposes of operation and for the purposes of rate making a line of its own from its mines to Trinidad, where it connects with the Santa Fe. It is held, therefore, that the publication of a joint rate between the Santa Fe and the Colorado & Southeastern is not unlawful.

The difficulty is here. The Colorado & Southeastern has no right to originate business upon the line of the Colorado & Southern between Ludlow and Trinidad. While the Colorado & Southeastern establishes through rates from points upon its line, no through rates are in effect from points upon the Colorado & Southern between Ludlow and Trinidad. The effect of this is to compel the mine operator between those points to pay the local rate to Trinidad and the Santa Fe rate from Trinidad. In other words, the rate from the intermediate point between Ludlow and Trinidad is higher than the rate from the more distant point, where the traffic moves through Ludlow.

It is urged that this is proper, since the line of the Colorado & Southeastern is entirely distinct from the line of the Colorado & Southern, but if the former road instead of hiring trackage rights over the latter had constructed a road of its own parallel to the Colorado & Southern, it must have made rates from all points upon this line no higher than from the more distant points where its mines are located. The rates from the complainants' mines, assuming them to be tributary to the Colorado & Southeastern, would be no higher than from the mines of the Victor Fuel Company. It is urged that the Colorado & Southeastern might decline to connect with the spurs running to the mines of the complainants, but the law requires such connection in certain cases and competitive conditions might require it in others. Evidently, the whole situation would be different in this respect if there were an independent line.

In our opinion these railroads should not be allowed to so divide and diversify themselves by contract and traffic agreements as to work a practical discrimination. The sum total of this arrangement between the Colorado & Southeastern, the Colorado & Southern, and the Atchison, Topeka & Santa Fe is an unlawful preference against the mines of the complainants and in favor of the mines of the Victor Fuel Company, from which in a proper case these parties might be ordered to cease and desist; but the Colorado & Southeastern is not

made a party to this proceeding, and no order of that kind should ordinarily be made unless all the offending roads are before the Commission.

In our opinion the present rate of 40 cents per ton from the mines of the complainants to Trinidad, when the coal is for points upon the Santa Fe, is excessive, and should not for the future exceed 25 cents. It is also our opinion that the Santa Fe should, by proper tariff provision, apply to this coal when received from the Colorado & Southern at Trinidad a rate 10 cents per ton less than the local Trinidad rate.

The attorney for the complainants was made to say upon the hearing that he did not attack the reasonableness of the local rate from Ludlow to Trinidad, but what he did attack was the through rate from Ludlow to the point upon the Santa Fe line; and there is no way in which that rate can be properly adjusted except by a reduction of that portion of the through rate received by the Colorado & Southern.

This would still leave the complainants at a disadvantage of 15 cents per ton, as compared with the operations of the Victor Fuel Company and the Colorado Fuel & Iron Company, but it must be noted that this advantage is obtained by those companies through the building of a railroad and the operation of that road for a less sum than ought, in the opinion of this Commission, to be forced upon the Colorado & Southern as a division. The advantage is due to the fact that these corporations have the requisite means with which to construct and operate these railroads, which the ordinary coal operator can not do. So long as there is identity of ownership in the agency of transportation and the thing transported, it is extremely difficult, if not impossible, to prevent discrimination between shippers.

15 I. C. C. Rep.

No. 1609.  
DARLING & COMPANY ET AL.  
v.  
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

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*Submitted December 10, 1908. Decided January 9, 1909.*

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Defendants' rates on phosphate rock shipped from the Mount Pleasant and Centerville districts in Tennessee to fertilizer manufactories at cities located in Illinois, Indiana, Ohio, Michigan, New York, and Pennsylvania, via the Ohio River crossings, found unreasonable, and reductions in such rates ordered.

*Douglas, Leckie & Thompson and Creed M. Fulton* for complainants.

*Robert S. Alcorn* for Baltimore & Ohio Railroad Company and Baltimore & Ohio Southwestern Railroad Company.

*O. E. Butterfield and C. B. Fernald* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Cincinnati Northern Railroad Company, Lake Shore & Michigan Southern Railway Company, Lake Erie & Western Railroad Company, Michigan Central Railroad Company, New York Central & Hudson River Railroad Company, and West Shore Railroad Company.

*Thomas C. Clark* for Cincinnati, Hamilton & Dayton Railway Company.

*E. B. Peirce* for Chicago & Eastern Illinois Railroad Company.

*S. F. Andrews and Ed. Baxter* for Indianapolis Southern Railroad Company, Illinois Central Railroad Company, Nashville, Chattanooga & St. Louis Railway Company, and Norfolk & Western Railway Company.

*W. G. Dearing* for Louisville & Nashville Railroad Company.

*C. B. Fernald* for Northern Central Railway Company, Vandalia Railroad Company, Pennsylvania Lines, Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, and Pere Marquette Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainants are manufacturers of fertilizer who complain of the rates on the phosphate rock which they use in their business from  
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mines in Tennessee to their manufacturing plants located at the following points, viz, Chicago, Ill.; Indianapolis, Ind.; Dayton, Columbus, Cleveland, Canton, and Sandusky, Ohio; Detroit, Mich.; Buffalo, N. Y., and Pittsburg, Pa.

The mines from which this rock comes are located in two districts, one upon the Louisville & Nashville Railroad, known as the Mount Pleasant district, and the other upon the Nashville, Chattanooga & St. Louis Railway, known as the Centerville district.

The quality of the rock obtained from these two fields is substantially the same, and the same grade sells for the same price. The distance from the Centerville district is somewhat greater than from the Mount Pleasant district, but the difference is not great, and it was conceded that the rates from the two fields to the points involved ought to be the same. Mount Pleasant is some 30 miles south of Nashville, and it was said that distances from this point would be fairly representative to these northern destinations.

In November, 1907, these rates were in all cases advanced. Generally the rate in effect previous to these advances was satisfactory to the complainants, the advance only being attacked in this proceeding; but in one or two instances claim is made that the original rate itself was too high. Below is given a table showing the old rate and the advanced rate, which is now in effect, in gross tons of 2,240 pounds:

To—	Old rates.	Present rates.	Increase.
Chicago, Ill.....	\$3.40	\$3.95	\$0.55
Indianapolis, Ind.....	3.00	3.50	.50
Dayton, Ohio.....	2.95	3.30	.35
Columbus, Ohio.....	3.20	3.65	.45
Cleveland, Ohio.....	3.32	4.05	.73
Canton, Ohio.....	3.55	4.10	.55
Sandusky, Ohio.....	3.27	4.05	.78
Detroit, Mich.....	3.32	4.10	.72
Buffalo, N. Y.....	3.92	4.50	.58
Pittsburg, Pa.....	4.10	4.45	.35

The complainants rely upon several grounds to show that the present rates are unreasonable:

1. The rates in effect previous to November, 1907, had been in force for some eight years, and the complainants insist that this is strong evidence of the fact that they were and would still be sufficiently high.

It has often been said by the Commission that the voluntary maintenance of a rate for a considerable period was in the nature of an admission that the rate was reasonable, which must be given great weight in determining that question unless explained. In this proceeding the defendants offer an explanation. It is said by them that these rates were established for the purpose of developing these Tennessee mines and that they were not supposed to be at the time reasonable rates for the service rendered.

These Tennessee phosphate beds were first opened about 1897. The mines of Florida and North Carolina were at that time already supplying large quantities of phosphate rock. The testimony of the defendants tends to show that the rates established from the Tennessee fields were made unusually low for the purpose of inducing the movement of this rock in competition with that of Florida and North Carolina. Phosphate rock as shipped requires no expensive preparation, and the development of the mine involves apparently no unusual outlay. Perhaps a low rate may have been necessary at first to induce shippers to turn their attention to this source of supply, but it is difficult to see how the maintenance of these rates for the last eight or ten years can be justified upon the theory that they were intended merely to establish an infant industry and with the expectation that they might be subsequently advanced. The same rate is necessary to move this commodity in competition with Florida and North Carolina to-day which has been in the past. These defendants under the circumstances here shown would hardly be warranted in putting in a rate materially lower at the outset than they intended to maintain subsequently.

It is also said by the defendants that the value of this rock when these rates were first established was only from \$1.50 to \$2 per ton, that to-day the value is more than twice as much, and that this is a good reason why the rate might be somewhat advanced. It seems to be true that the rock as shipped to-day is more valuable than when the first movement occurred, this being due largely to the fact that at the present time it is prepared for shipment, whereas at first it was taken from the ground in its natural state. The increase in value is a circumstance which should be considered by us in determining the reasonableness of this rate.

The complainants insist that upon the strength of this low rate capital has been invested which would be seriously impaired if these advances are permitted.

Previous to the exploitation of these Tennessee mines the fertilizer used in the middle west was largely manufactured upon the Atlantic seaboard and in Atlantic seaboard territory. The phosphate rock could be brought there by water and the various ingredients assembled for the purpose of manufacture to the best advantage in that section. The opening of the Tennessee mines made it possible to transport this rock into the middle west and undoubtedly led to the establishment of fertilizer plants at the points involved. It fairly appears that at the present time these plants meet with strong competition in the eastern part of Ohio, and to some extent in Indiana, but the fertilizer used in the central west is mainly manufactured there.



Fertilizer of the grade manufactured by these complainants sells in the factory at from \$15 to \$20 per ton. About one-third of a ton of phosphate rock is consumed in the manufacture of a ton of commercial fertilizer. An advance of 30 cents per ton in the rate on phosphate rock adds, therefore, 10 cents per ton to the cost of the fertilizer. While it may well be that advances by the amounts complained of might determine the point from which the rock would be brought in case a factory could obtain its supply from two or more sources, it is evident that it does not so add to the cost of manufacture as to imperil or seriously affect the business of these complainants. It appears that in the last few years the price of fertilizer has increased \$2 per ton, and that in the last year there was an advance of from 50 to 90 cents per ton. If, therefore, this rate should be considered otherwise too low, there does not seem to be any very strong competitive reason from the standpoint of these complainants why it might not properly be somewhat increased.

There may, however, be a valid reason of that kind from the standpoint of the owner of the Tennessee mine; and while the mine owner is not as such a party to this proceeding, we must in the establishment of those rates consider his interest as well as that of the manufacturer so far as the facts disclosed enable us to understand and appreciate it.

As already indicated, phosphate rock may be obtained either from Florida, North Carolina, or Tennessee. It does not appear from this record that North Carolina rock comes into competition with that from Tennessee in the territory covered by this complaint; but it does appear that at certain of the points involved there is keen competition with rock from Florida. Those mines can produce phosphate rock, owing to the manner in which it is prepared for shipment, somewhat cheaper than the mines of Tennessee. The distance from the Florida mine to the seacoast is but a comparatively few miles and the cost of transportation by water is low. This Florida rock seems to occupy all territory east of the Buffalo-Pittsburg line to the almost complete exclusion of other phosphate rock. At Pittsburg and Buffalo the greater part of the rock employed is from Florida, the carriage being rail and water to the Atlantic seaboard and by rail from thence. At Cleveland, Sandusky, and Detroit Florida rock is also used in very large quantities, being carried by rail and water, or perhaps all water from ports like New York to those destinations. Now, while an increase of 10 cents per ton in fertilizer, which sells for \$20 per ton, is not a very serious matter to the manufacturer, a difference in the transportation charge of 50 cents per ton upon the rock which he uses, or even less, may determine the point from which he will purchase his supplies. In this view, to the mine owner—and some of these

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complainants do own Tennessee mines—the advances in rate to Pittsburgh, Buffalo, and other lake ports are of great importance.

2. The complainants refer to numerous rates applied to commodities somewhat similar to phosphate rock, or at least no less expensive to handle, which are lower for hauls of the same length than the rates in question. Such comparisons are not of much assistance in determining the reasonableness of these charges. Before we can conclude that the rate on phosphate rock is too high, because it is higher than some other rate named, we must know that the rate selected as the standard of comparison is itself a reasonable and fair one. This can by no means be affirmed from the mere fact that it is found in effect, or even that it has continued in effect for a considerable length of time. It is easy to select from the great mass of rates in this country instances which are abnormal, both above and below a just rate. Many of the rates thus referred to by the complainants are upon their face abnormal, and on the whole but little importance can be attached to these comparisons upon which much reliance seems to be placed by the complainants.

3. The rates per ton-mile yielded to the carrier by the rates in effect previous to November, 1907, were from 4 mills to 6.5 mills per ton-mile north of the Ohio River, and from 6 to 10 mills per ton-mile south of that river. The present rates are materially higher, and in some cases, at least, produce a rate per ton-mile which equals or exceeds the average rate per ton-mile from all the business of the railways transporting this traffic.

Phosphate rock is desirable freight; its value is from \$4 to \$5 per ton at the mine, it loads readily to the full capacity of the car, and the risk of damage is practically nothing. The haul in the instances under consideration is long, averaging perhaps 500 miles. It is not freight which requires an expedited service, but it can be moved at the convenience of the carrier. The complainants urge that the rate applied by the defendants to the movement of this business in carloads ought not to equal the average receipts from traffic of all kinds, high and low grade, carload and less than carload.

There is very great force in this suggestion, but it is not absolutely conclusive. Everything depends upon the character of the traffic of the particular road taken as a whole. For example, the Norfolk & Western Railroad, 58 per cent of whose traffic is coal and coke which is handled in solid train loads and under most favorable conditions as to grades for the most part, operated for the year 1907 for 62.94 per cent, although its average receipts per ton mile from all sources were only 4.9 mills. It is quite probable that a reasonable rate upon phosphate rock over that road might well be greater than the average receipts from all traffic; while over most roads it clearly ought not to

be. The rate per ton mile upon this commodity should be lower than upon most commodities, and lower in almost every case than the average receipts of the carrier from all sources.

4. A fourth ground relied upon by the complainants is that while rates from these phosphate mines to northern destinations were advanced, corresponding advances were not made to the south. It appears that something less than one-half the movement of phosphate rock from points in the Mount Pleasant field is north, the balance being to the south. Southern rates have not been advanced, and the complainants assert that this is part of a scheme to prefer the south as against the north, and is therefore an undue discrimination which should be corrected.

The evidence tends to show that these southern lines regard it as better policy to move phosphate rock south than north, since the movement south is largely to fertilizer mills located on their own lines, so that they obtain not only the haul of the rock in, but also transport the manufactured products out, and in addition the other supplies used in these fertilizer mills. It was insisted, however, by representatives of southern lines that, whatever their feeling might be upon the proposition above stated, rates to the south had not been advanced for the reason that they could not be. It has been already seen that extensive phosphate deposits are located in North Carolina and Florida. Fertilizer mills through the south can draw their supplies of rock frequently from either Florida, North Carolina, or Tennessee, and rates from Tennessee have been made in competition with those from the other fields. It is probable that no advance could be made from the Tennessee fields to these southern points unless corresponding advances were also put in effect from Florida and North Carolina. Inasmuch as there is no competition whatever between the fertilizer mills in the south and the mills of these complainants, the failure to advance southern rates contemporaneously with the advance of northern rates would not appear to have created any undue discrimination which would make the advances in question unlawful.

Having noticed the claims of the complainants and the answers of the defendants thereto, in all of which nothing is found worthy to be deemed controlling in the disposition of the question before us, we next pass to an examination of the rates themselves.

The rates from the Mount Pleasant district to all the destinations are joint through rates published by the Louisville & Nashville as the initial line and concurred in by the delivering lines. The rates from the Centerville district are not, in most cases, through rates, and never have been, but are made up by combining the rate published by the lines up to the Ohio River with the rate published by lines north of

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that river. The rates up to the river when for beyond have always been less than the rate for consumption at the river; it would appear that north of the river the local rate and the proportional rate have been the same.

It is understood that in dividing the through rate from the Mount Pleasant district the Louisville & Nashville has received as its division an amount equivalent to the proportional rate established from the Centerville district.

From the Centerville district the advance south of the river has been effected by making the local rate up to the river and the proportional rate beyond the same in all cases, except from Evansville. In the past local rates have been, to Cincinnati, \$2.50; to Louisville, \$2.25; to Evansville, \$2.50; while the proportional rates were, to Cincinnati, \$2.15; to Louisville, \$1.90; to Evansville, \$2. The only proportional rate now in effect which is lower than the local rate is that to Evansville, which is \$2.35.

In addition to this, for the purpose of meeting the competition of Florida rock at the lake ports, lines south of the Ohio River shrunk their divisions by an additional sum of 23 cents per ton to Buffalo, Cleveland, Sandusky, and Detroit, and it appears that to these points through rates were published from the Centerville as well as from the Mount Pleasant district.

The advances south of the river are therefore 35 cents to all the points involved except the last four, and 58 cents to each of these.

Lines north of the river advanced their proportionals when from the Centerville district and their divisions when from the Mount Pleasant district by the following amounts:

	Cents.		Cents.
Chicago .....	20	Cleveland.....	15
Canton .....	20	Dayton .....	0
Sandusky .....	20	Pittsburg .....	0
Indianapolis .....	15	Detroit .....	20
Columbus.....	10	Buffalo.....	0

Below is a table giving the present rates from the Centerville district to the various Ohio River crossings for beyond, and also the former proportional rates between the same points, together with the rate per ton-mile in each case:

To—	Old rate.	Per ton per mile.	New rate.	Per ton per mile.
		Cents.		Cents.
Cairo.....	\$2.00	0.85	\$2.35	0.91
Cincinnati.....	2.15	.60	2.60	.69
Evansville.....	2.00	.98	2.85	1.09
Louisville.....	1.90	.81	2.25	.96

The following table states the divisions or proportionals received by lines north of the river to the various points via the short line combination previous to the advances, and also the present divisions or proportional rates, with the ton-mile rate in each case:

To—	Distance.	Old rate.	Rate per ton per mile.	New rate.	Rate per ton per mile.
	<i>Miles.</i>		<i>Mills.</i>		<i>Mills.</i>
Chicago .....	300	\$1.40	4.66	\$1.60	5.33
Indianapolis .....	108	1.00	9.25	1.15	10.64
Canton .....	250	1.40	5.60	1.60	6.40
Sandusky .....	212	1.35	6.36	1.55	7.31
Columbus .....	116	1.05	9.05	1.15	9.91
Dayton .....	56	1.80	14.28	1.80	14.28
Pittsburg .....	307	1.95	6.35	1.95	6.35
Detroit .....	271	1.40	5.16	1.60	5.90
Buffalo .....	427	2.00	4.68	2.00	4.68
Cleveland .....	244	1.40	5.73	1.55	6.36

5. An examination of the above tables leads to the conclusion that the old rates to most points were in no proper sense abnormally low. The average ton-mile receipts of the Louisville & Nashville for the year ending June 30, 1908, were 7.79 mills. The average ton-mile receipts from the Mount Pleasant district to the Ohio River crossings, both upon the basis of its local rates and upon the basis of the original proportional rates, exceeded its ton-mile earnings from all sources, except in the case of Cincinnati. While the ton-mile rate to Cincinnati is less, it must be remembered that this company can, if it elects, in most, if not all cases, deliver this traffic to its connections at Louisville or Evansville instead of carrying it on to Cincinnati. If it hauls it the additional 110 miles it is because it prefers to do so for the additional 25 cents. The per ton-mile rate north of the river is less than south, but the general level of rates in that territory is materially less than in the south.

If instead of considering the separate portions of these rates, either north or south of the Ohio River, we look at the entire through rate, which is really the thing for our investigation, we still find that the rate per ton-mile under the old tariffs was certainly not abnormally low.

The present local rates from these phosphate mines to various Ohio River crossings appear to be satisfactory both to the carriers and the shippers. In the past there has been a difference of 35 cents per ton between these local rates and proportional rates for beyond. This Commission has often expressed the opinion that a difference of this kind should ordinarily exist. In the present case, in view of the fact that the value of this commodity has somewhat increased, we think that the proportional rate up to the river may be slightly advanced and that a difference of 25 cents between the local and proportional would be just.

In some instances the old proportions received by carriers north of the river were low, and we think might properly be somewhat advanced. This is true of Chicago, Canton, Sandusky, Columbus, and Cleveland.

The matter upon which we have felt the greatest doubt is as to lake ports. Previous to the advance lines south of the Ohio River had shrunk their rates or divisions by 23 cents per ton to Detroit, Sandusky, Cleveland, and Buffalo. This was for the avowed purpose of meeting competition of Florida rock at those points. In the new tariff no distinction is made between these lake towns and other points, and the reason alleged by southern lines for this change of policy is that inquiry had developed that no competition at these lake ports existed. Such is not the fact. This record conclusively shows that more than one-half the phosphate rock used at Buffalo is from Florida and that the Florida rock goes freely to the other three points. If the belief upon which the southern carriers acted in taking out these reductions was erroneous, ought the old rates to be restored?

Carriers may, for the purpose of meeting water competition, make rates lower than would otherwise be justifiable, even to the extent of charging a less rate to the more distant point. It is also true that the carrier may determine for itself whether it will or will not meet such water competition. While, however, the carrier may in the first instance settle its policy in this respect it must act under certain limitations. It can not be permitted to compete at one point and decline to compete at another, where all conditions are the same; nor should it, ordinarily, be allowed to compete one day and decline to compete the next. The public has the right to require equal and uniform treatment within the bounds of reason. Cases might arise therefore where the Commission would require the continuance of a rate established to meet such competition, but the Commission does not favor the existence of such rates or rate situations. A water port is entitled to whatever advantage it can obtain through transportation by water, but its location does not entitle it to lower rates by rail, and although such preference may lawfully be accorded by a carrier in the protection of its own interests it should not be required except in case where manifest wrong would otherwise result. In the present case there is no sufficient reason for compelling carriers to prefer these cities, and rates to Buffalo, Cleveland, Sandusky, and Detroit will be established by our order upon the same basis as to other points involved; that is, the same proportional rate up to the Ohio River will be used from the Centerville district and through rates from the Mount Pleasant district will be constructed upon the basis of the same division to the carrier south of the river in all cases.

We are of the opinion that the following advances may properly be made:

	South.	North.	Total.
	Cents.	Cents.	Cents.
Chicago .....	10	20	30
Canton .....	10	20	30
Sandusky .....	33	10	43
Indianapolis .....	10	0	10
Columbus .....	10	10	20
Cleveland .....	33	15	48
Dayton .....	10	0	10
Pittsburg .....	10	0	10
Detroit .....	33	20	53
Buffalo .....	33	0	33

We are therefore of the opinion that the following rates from the Mount Pleasant district to the various points below, in tons of 2,240 pounds, would be reasonable for the future:

Chicago.....	\$3. 70	Cleveland .....	\$3. 80
Canton .....	3. 85	Dayton .....	3. 05
Sandusky .....	3. 70	Pittsburg.....	4. 20
Indianapolis .....	3. 10	Detroit.....	3. 85
Columbus.....	3. 40	Buffalo .....	4. 25

We are of the opinion that from the Centerville district the following rates, in tons of 2,240 pounds, would be reasonable as proportional rates to be applied on business for beyond and should not be exceeded for the future:

To Cincinnati .....	\$2. 25
To Louisville .....	2. 00
To Evansville.....	2. 10

We are of the opinion that the following rates in tons of 2,240 pounds would be reasonable to apply for the future from the Ohio River crossings named to the various points named, and that they should not be exceeded for the future:

From—	To—	Rate.
Evansville .....	Chicago, Ill .....	\$1. 60
Louisville .....	Indianapolis, Ind .....	1. 10
Cincinnati .....	Canton, Ohio .....	1. 60
Cincinnati .....	Sandusky, Ohio .....	1. 45
Cincinnati .....	Columbus, Ohio .....	1. 15
Cincinnati .....	Cleveland, Ohio .....	1. 55
Cincinnati .....	Dayton, Ohio .....	. 80
Cincinnati .....	Pittsburg, Pa .....	1. 95
Cincinnati .....	Detroit, Mich .....	1. 60
Cincinnati .....	Buffalo, N. Y .....	2. 00

Since the minimum may properly vary with the capacity of the car we have not in this order established any minimum, leaving that to the discretion of the defendants.

We have not attempted to fix rates to all the Ohio River crossings. It is our understanding that traffic might move to all the points involved through those Ohio River crossings which are named. The

carriers may in filing tariff to comply with the order in this case embrace in that tariff rates via other Ohio River crossings and the tariff as a whole will be received and filed upon the notice permitted for filing of tariff in compliance with our order.

Reparation will be allowed upon the basis of the rates established; that is, the complainants will be allowed the difference between the rates paid by them and the rates established by this order. The several complainants should within thirty days from March 1, 1909, file with the Commission a specification showing in detail the shipments made by them, the amounts paid, and the amount of reparation claimed. A copy of this should be served upon the defendants, who will be allowed thirty days from the date of service in which to file any objections thereto. Questions of fact arising will be determined by the Commission upon due hearing.

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No. 1628.

NEBRASKA-IOWA GRAIN COMPANY

v.

UNION PACIFIC RAILROAD COMPANY.

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No. 1642.

CROWELL LUMBER & GRAIN COMPANY

v.

UNION PACIFIC RAILROAD COMPANY.

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No. 1655.

UPDIKE GRAIN COMPANY

v.

UNION PACIFIC RAILROAD COMPANY.

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No. 1644.

CAVERS ELEVATOR COMPANY

v.

UNION PACIFIC RAILROAD COMPANY.

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No. 1775.

NYE-SCHNEIDER-FOWLER GRAIN COMPANY

v.

UNION PACIFIC RAILROAD COMPANY.

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*Submitted November 9, 1908. Decided January 6, 1909.*

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1. The various complainants herein seek reparation caused by alleged undue discrimination against them in favor of competitors in elevator allowances made by defendant at Omaha and Council Bluffs; defendant declined to pay these allowances, alleging that they were unlawful and that

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the terms of the tariffs were not complied with; *Held*, That this Commission can not, without stultifying itself, make any ruling which will condemn as unlawful the payment of these allowances during the time they have been expressly sanctioned by its decisions.

2. The Commission finds with respect to all the shipments involved in these cases that the provision in the tariffs requiring a return to defendant of the car within forty-eight hours as a condition precedent to the payment of the allowance is unjust, unreasonable, unduly discriminatory, and unlawful; and that complainants are entitled to damages by reason of the maintenance of such unlawful provision which equal the amount which would have accrued to them by way of this elevation allowance, provided the tariff had contained no such provision. Defendant has paid to competitors of complainants this elevation allowance; it has at the same time declined to pay it to complainants. The Commission finds that defendant's reason for so declining is not a valid one, and that it has been guilty of undue discrimination against complainants, for which they are entitled to recover as damages the difference between what has been paid to their competitors and to them.
3. Reparation awarded in case No. 1628 for \$2,509.74 and interest.
4. Reparation awarded in case No. 1775 for \$1,560.79 and interest.
5. Reparation awarded in case No. 1642 for \$698.29 and interest.
6. Reparation awarded in case No. 1655 for \$6,742.10 and interest.
7. Reparation awarded in case No. 1644 for \$1,013.71 and interest.

*Edward P. Smith, C. J. Smyth, W. D. McHugh, and A. H. Murdock* for complainants.

*Edson Rich, N. H. Loomis, and F. C. Dillard* for defendant.

#### REPORT OF THE COMMISSION.

##### PROUTY, *Commissioner*:

The above cases were heard together. The prayer in all is for reparation, and while the facts differ somewhat in the various cases the essential features are the same and may be stated in a single report.

By tariff effective June 27, 1906, the Union Pacific Railroad Company provided for the payment, under certain conditions named in the tariff, of 1½ cents per 100 pounds for the unloading into elevators at Omaha and Council Bluffs of grain transported by it from certain points upon its line in Nebraska. By tariff effective June 1, 1907, the amount of this allowance was reduced to ¾ of a cent per 100 pounds, all the other conditions remaining the same. The complainants all operate grain elevators at Omaha or Council Bluffs, and the purpose of this proceeding is to obtain payment for the elevation of several thousand carloads of grain brought to Omaha by the Union Pacific from the points specified in the above tariffs and unloaded by the complainants into their elevators.

The Union Pacific declines to make payment upon two grounds: First, because, with respect to all the carloads so unloaded, the

payment of the elevation allowance was unlawful and can not therefore be made, even though provided for in the tariff; second, because, with respect to certain carloads, the terms of the tariff were not complied with.

In 1899 the Union Pacific Railroad Company entered into a contract with Peavey & Company for the construction of an elevator at Council Bluffs, by the terms of which the Union Pacific agreed to pay, under certain conditions,  $1\frac{1}{2}$  cents per 100 pounds upon all grain transferred through such elevator. Under this contract the Omaha elevator was built and subsequently operated.

The attention of this Commission being called to the existence of this contract, and it being alleged that payments under it were in reality rebates, an investigation was undertaken, as the result of which the Commission decided, June 25, 1904, that payments under this contract were not then unlawful. *In the Matter of Allowances to Elevators by the Union Pacific Railroad Company*, 10 I. C. C. Rep., 309.

The only elevators located upon the rails of the Union Pacific Company at either Omaha or Council Bluffs are the Omaha elevator and the Trans-Mississippi elevator. Previous to the decision of the Commission above referred to, the Union Pacific had made payment of this  $1\frac{1}{2}$  cents to these two elevators, but had declined to make a similar allowance to other elevators at Omaha and Council Bluffs not located upon its rails. By its tariff, effective June 27, 1906, and hereinbefore referred to, the payment of these allowances was extended to all elevators at Omaha and Council Bluffs.

During the year 1906 the attention of the Commission was once more directed to this matter, and as a result the former case was reopened and a further hearing had. On April 9, 1907, the Commission again decided that the payment of these allowances at Omaha and Council Bluffs by the Union Pacific was not unlawful. *In the Matter of Allowances to Elevators by the Union Pacific Railroad Company*, 12 I. C. C. Rep., 85.

Still later, upon application of certain interests at Chicago, this matter was further considered, and the conclusion now reached that payment to the Omaha elevator under the Peavey contract for handling grain owned by that elevator, as it was actually handled, was illegal. This decision was promulgated June 29, 1908. *In the Matter of Allowances to Elevators by the Union Pacific Railroad Company*, 14 I. C. C. Rep., 315.

The payment of these allowances by the Union Pacific Company at Omaha compelled similar payments by its competitors at that point, and this in turn extended to other markets upon the Missouri River. The grain interests of St. Louis complained to the Commission that

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the making of these allowances at the Missouri River, while they were not made at St. Louis, worked a discrimination against that grain market, and upon this complaint the Commission reexamined the whole subject. It now held that this service at the Missouri River was not a transfer, but elevation; not required by the railroad, but performed for the benefit of the grain dealer, and that payment by the carrier for that service was an undue discrimination and unlawful. *Traffic Bureau, Merchants Exchange of St. Louis v. C., B. & Q. Ry. Co.*, 14 I. C. C. Rep., 317.

At the time of deciding the St. Louis case the Commission ordered the defendants in that case to cease and desist from the payment of such allowances upon the Missouri River on and after October 1, 1908. That date has since been postponed until July 1, 1909. The Union Pacific Railroad Company was not a party to the proceeding in which that order was made, but the Commission did direct that company to cease and desist from these payments under the Peavey contract. The effective date of that order has since been extended until July 1, 1909.

It will be seen, therefore, that the Commission has finally decided that the payment of elevation allowances like those for which the complainants seek to recover is unlawful. The defendant contends that it should not make an unlawful payment and that certainly this Commission ought not to direct a payment the unlawfulness of which it has itself declared.

All the carloads in question moved between June 27, 1906, when the first tariff naming this allowance was established by the Union Pacific, and June 29, 1908, when the decision of the Commission finally holding against the lawfulness of the allowance was promulgated. During this entire period these tariffs were maintained by the Union Pacific with the express sanction of this body. It is furthermore conceded that during that time extensive payments were made under these tariffs by the Union Pacific Company to the competitors of these complainants at Omaha, and that similar allowances were made by other carriers to various elevators at Omaha and at other points upon the Missouri River. If, therefore, these complainants do not now recover these allowances, there arises against them a serious discrimination.

This Commission is an administrative body. The rates, regulations, and practices which it establishes within its jurisdiction become rules of action which may and must enter into the business dealings of this country. It may be necessary to change from time to time these rulings as varying conditions require, but they should never be changed except upon due notice to the public, which is affected by

them, and it would be altogether intolerable if the change could be made retroactive.

No holding of this Commission can render lawful that which is of itself unlawful, but we have never held that the payment of these elevation allowances was unlawful *per se*. We have held that such payment worked a discrimination. At first we were of the opinion that under all the circumstances such discrimination ought not to be pronounced undue and therefore unlawful; subsequently, upon a wider range of vision, and especially in view of the results of our previous holding, we reached a contrary conclusion. Although such conclusion has been reached and announced, the practice is still continuing, with the approval of this Commission. We have postponed the effective date of our order for the purpose of permitting the interests involved to obtain a judicial determination of its lawfulness, and we have suggested that in the interim the payment of these allowances should not be disturbed by reason of our holding. This Commission can not, without stultifying itself, make any ruling which will condemn as unlawful the payment of these elevation allowances during the time they have been expressly sanctioned by its decisions. We are clearly of the opinion and hold that payment should be made on account of all cars which admittedly fall within the provisions of these tariffs.

Both the tariffs above referred to provide that the payment shall only be made, first, where the grain is subsequently loaded out of the elevator and sent east; second, when the car is unloaded and returned to the Union Pacific Company within forty-eight hours. It is conceded that all the grain in question was subsequently loaded out for shipment east and therefore that the first condition has been complied with, but many of the cars were not returned to the Union Pacific within the forty-eight hours, and the serious question before us arises upon this provision.

Most of the elevators at Omaha and Council Bluffs are located at points off the iron of the Union Pacific. As a rule, they are reached from the Union Pacific over some railroad system which acts as a switch line between the Union Pacific and the elevator, although in one, and perhaps more than one, instance the railroad which performs this service is a purely local concern. The elevator of the Nebraska-Iowa Grain Company is located upon the tracks of the Burlington, and the manner in which carloads of grain reach this elevator fairly represents the general situation and presents the questions involved.

Grain shipped over the Union Pacific into Omaha and Council Bluffs is first placed upon an inspection track, where it is, or may be, given an official inspection and grade, and where the grain itself is

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often sold. The owner designates the disposition which is to be made of the grain while it is upon this track. If a delivery to the Nebraska-Iowa elevator is directed, the Union Pacific moves the car to what is known as its transfer track, where it is taken possession of by the Burlington and moved over its line to the elevator of the Nebraska-Iowa Company. The Union Pacific charges \$2 for the movement from the inspection track to the transfer track, and the Burlington charges another \$2 for the movement from the transfer track to the elevator, both of which switching charges are added to the freight bill and collected by the Union Pacific Company, which settles with the Burlington Company for its services.

It frequently happens that Burlington cars are furnished by the Union Pacific at its stations in Nebraska for the shipment of grain into Omaha. If, now, a Burlington car is taken by that company for movement to the elevator of the Nebraska-Iowa Grain Company, it passes out of the possession of the Union Pacific and into the possession of its owner. There is no way in which the Nebraska-Iowa Company can cause the return of that car to the Union Pacific within the forty-eight hours or at any other time. The car is in the possession of the railroad which owns it and ought not to be returned to the Union Pacific. This situation arises out of the manner in which cars are interchanged in the handling of business between the Union Pacific and the Burlington systems.

It is apparent, therefore, that in case of this Burlington car the condition which the Union Pacific has imposed in its tariff is an absolutely impossible one to the Nebraska-Iowa Company. If this carload had been delivered at an elevator upon the line of the Union Pacific, like the Omaha or the Trans-Mississippi, the car when unloaded would of necessity have been returned to the Union Pacific and the elevation allowance would have become payable. It follows, therefore, that there arises out of the application of this tariff to the ordinary method of transacting this business a necessary and unavoidable discrimination in favor of elevators located upon the line of the Union Pacific and against those located upon other lines like that of the Nebraska-Iowa Company. The complainants insist that as applied to a transaction like this the provision in the tariff that cars shall be returned within forty-eight hours is discriminatory and unlawful and should be disregarded.

Harlan, Commissioner, speaking for the Commission in its second report in the so-called Peavey case, said:

We adhere to the view expressed in the original report and opinion of the Commission, that such an arrangement embracing, as it now does, all the available elevators at the points named, and not being confined to the Peavey elevators alone, is not in itself unlawful. By whatever name it may be called the service actually rendered is in fact elevation, and may be so regarded under the

amended act. It must be understood, however, that if such elevation is furnished by the Union Pacific Railroad for the grain of one shipper over its lines, proper arrangements must be made by it for furnishing elevation to other shippers over its lines, for otherwise the company would subject itself to the charge of practicing an unjust and unlawful discrimination against other shippers who, for any reason, can not use the Peavey elevators. *In the Matter of Allowance to Elevators by the Union Pacific Railroad Company*, 12 I. C. C. Rep., 88.

It is manifest, therefore, that the Commission intended to approve the payment of these allowances by the Union Pacific Company only upon the theory that they were extended to all elevators alike and were not confined to the elevators of Peavey & Company.

It is equally manifest that this tariff excludes the Nebraska-Iowa Company from participation in this allowance when grain is shipped to its elevator in the car of the Burlington Company, although if shipped to the elevator of Peavey & Company in the same car the allowance would be paid. An unjust discrimination necessarily arises out of this combination of circumstances. It avails the Union Pacific nothing to say that by the terms of its published tariff this allowance is open to the Nebraska-Iowa Company, when by its method of business it absolutely precludes that company from obtaining it.

It may be suggested that the complainant by selecting the proper car in which to load its grain might avoid this result, but, in the first place, when the grain is loaded at the station in Nebraska, it is not always, nor perhaps in the majority of instances, settled to what elevator it will finally go. The title to this grain is often passed after the car reaches the inspection track. Can that system be lawful which prohibits the Nebraska-Iowa Company from purchasing grain which the Union Pacific has brought to Omaha in a Burlington car under penalty of a discrimination against it by the amount of this elevation allowance?

In the second place, and still more to the point, the grain shipper may not be able to select the car in which his grain is to be transported. The Union Pacific furnishes the car. In doing so it makes no distinction to the shipper between different cars which are offered. If that company desires to excuse itself from the consequence of these conditions by appropriating a certain car to the movement of certain grain it must at least so advise the shipper at the point of origin and furnish a suitable car for the desired destination. Nothing of the kind appears in these cases. This grain was offered for shipment to Omaha and for delivery at Omaha. All cars tendered by the Union Pacific for its movement must be counted as the cars of the Union Pacific Company.

Some attempt was made upon the argument to claim that the Union Pacific Company might with propriety accord this allowance

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to the Omaha elevator while refusing it to the Nebraska-Iowa Grain Company, the shipment being, in both cases, in a Burlington car, for the reason that the Union Pacific made more out of the transaction when the unloading was upon its own rails. An examination of the facts would, however, indicate the contrary.

The Union Pacific Company must pay the Burlington a per diem for the use of the car so long as it remains in its possession, but that payment stops as soon as the car is delivered into the possession of its owner. In case, therefore, of the car which is unloaded at the Omaha elevators the Union Pacific must perform a switching movement from the inspection track to Omaha elevator, must move the car from the Omaha elevator back to the transfer track and must pay the Burlington road its per diem during whatever time is required for the making of these various movements, while, when the car is unloaded at the Nebraska-Iowa elevator, the only movement is to the transfer track and the per diem stops as soon as the car is received upon that track by the Burlington Company.

We are of the opinion that a practical application of this forty-eight-hour condition to cases where the car is owned by the road which performs the switching service to the elevator works an unjust discrimination against the owner of the elevator and that with respect to such shipments the rule itself must be held to be unlawful.

The rules of the American Railway Association, of which all the railroads entering Omaha are members, provide that loaded cars received in switching service shall be confined to the switching territory, and must be, when empty, returned to the owner, if there is a direct connection within the territory. Otherwise, the empty car may be returned to the road from which it was received or may be loaded, generally speaking, in the direction of the road which owns the car. The Union Pacific and all the other railroads entering Omaha are members of this association and were, during all the time covered by this contract, operating in the interchange of cars under the above rules.

The elevator of the Updike Grain Company is located upon the railroad of the Union Stock Yards Company, which is a local line extending from Omaha to the stock yards at South Omaha and having connection with most of the railroads entering Omaha. It does not appear whether this railroad is or is not a member of the American Railway Association, but the case does show that previous to the publication by the Union Pacific Company of either of the tariffs involved the Union Stock Yards issued, with the approval of the Union Pacific Company, a circular indicating the disposition which would be made of cars rendered empty upon its line, and it was admitted upon argument that the disposition of such cars provided for



by this circular was in accordance with rules of the American Railway Association above quoted.

As already indicated the Union Stock Yards Railroad makes direct connection with most of the systems entering Omaha, and since many of the cars in which this grain was transported to the elevator of the Updike Company belonged either to the Union Pacific or to systems having direct connection with the Stock Yards Railroad, it was the imperative duty of that railroad to return these cars when empty to their owners.

The traffic manager of the Updike Grain Company testified that, being uncertain as to the proper application of the forty-eight-hour provision in the tariff, he applied to the general freight agent of the Union Pacific Company, with a view to ascertaining what disposition should be made of these cars when empty which belonged to other railroads than the Union Pacific. He was informed by that company that such cars should not be returned to the Union Pacific, but should be loaded out for the east, in accordance with the rules of the railway association. This same gentleman further testified that it was the custom of his company to call up the Union Pacific offices from day to day for the purpose of ascertaining what was to be done with particular cars as they became empty, and that they were loaded without exception in accordance and in consequence of instructions received.

The Updike Company claims that by virtue of this arrangement with the Union Pacific Company it was relieved from the duty of returning these empty cars and that it is entitled to the allowance although they have not been returned, inasmuch as failure to return them was due to the direction of the Union Pacific to send them elsewhere.

This claim of the Updike Company we are not prepared to sustain. If this were a contract between that company and the Union Pacific Railroad Company for the performance of some service and if payment for that service were conditioned upon the return of the empty car, clearly the Union Pacific Company might waive the performance of that condition. But these tariffs are not matters of contract. They furnish rules for the guidance of the general public. They can not be varied from, even though it may be for the interest in a particular case both of the shipper and of the railway that they should be. If the Union Pacific Company and the Updike Grain Company desired to make a different disposition of these cars from that required by the terms of the tariff, the tariff itself should have been amended accordingly.

The question remains, therefore, whether, omitting from consideration the instructions of the Union Pacific Company as to the disposition of these cars, the forty-eight-hour provision is binding upon

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the Updike Company. As already stated, the Union Stock Yards Railroad has direct connection with most railway systems entering Omaha. The larger part of the foreign cars unloaded at the Updike elevator belonged to these systems. It was therefore the positive duty of the Stock Yards Railroad, in accordance both with its circular and with the rules of the railway association to make delivery of these cars when empty to their owners. No valid distinction can be drawn between a Burlington car unloaded at the Updike elevator and the same car unloaded at the elevator of the Nebraska-Iowa Grain Company. In the latter case the car is actually in the possession of its owner and in the former case it is in the possession of the Stock Yards road, which is under obligation to return it to that owner, and which does so. Certainly the Union Pacific Company can not insist that the Stock Yards Railroad shall violate the very rules which it has been instrumental in establishing and upon the observance of which it is daily insisting, as a condition precedent to obtaining the payment of this elevation allowance by the Updike elevator. In both cases compliance with the forty-eight-hour provision is impossible with the elevator not situated upon the rails of the Union Pacific. The holding which we have made with respect to cars belonging to the railroad which performs the switching service must apply with equal force to cars owned by railroads which have direct connection with the switching road.

There still remain in the specifications of all these complainants a certain number of cars belonging to roads which do not have a direct connection with the switching road.

The rules of the American Railway Association, already referred to, require that the car shall be returned when empty to its owner when that owner has a direct connection within the switching territory. In such case the road in whose possession the empty car is has no option; the car can not be returned to the Union Pacific Company. When, however, the car is the property of some railroad having no such direct connection, it may either be returned to the railroad from which it was received or loaded out in such a way that the road owning it will participate in the haul. Apparently it is optional with the switching road to determine whether it shall be returned or loaded out; the elevator can not direct the disposition of the car. If this is so the condition, in case of the foreign car not owned by a direct connection, is just as impossible of execution as if the car were the property of a direct connection, since the elevator company can not in either event secure a return of the car.

Assuming that the elevator company could direct the return of the car to the Union Pacific, the same result must follow for the reason that no distinction can be made between the foreign car which belongs

to the railroad upon which the elevator is located or the foreign car which belongs to a railroad having a direct connection with the switching territory of Omaha and the foreign car which belongs to some line not having such direct connection without occasioning necessary discrimination. If, for example, shipment is made from a point upon the Union Pacific in a Burlington car, to be unloaded at the Updike elevator or the Nebraska-Iowa elevator, under our previous holdings the elevator must of necessity receive this elevation allowance. If shipment is made to the Omaha elevator in either a Burlington or a Baltimore & Ohio car, that elevator must of necessity receive the allowance; but if the Baltimore & Ohio car is sent to either the Nebraska-Iowa elevator or the Updike elevator the allowance may not accrue, since it may not be possible to return that car to the Union Pacific at any time, and certainly not within the forty-eight hours. The shipper who has shipped grain to Omaha and holds it for sale upon the inspection track of the Union Pacific in a Burlington car can obtain more for that grain from the Nebraska-Iowa elevator by  $1\frac{1}{4}$  cents per 100 pounds than as if the same grain had been loaded and shipped in a Baltimore & Ohio car. This discrimination results not from any lack of diligence upon the part of the shipper nor from any disadvantage of location upon his part, but entirely from the acts of the Union Pacific Company itself. In our opinion, a condition which necessarily results in discrimination of this sort can not be a reasonable or lawful requirement, and we are constrained to hold that, as applied to foreign cars of all descriptions, the forty-eight-hour provision is void.

This leaves for consideration Union Pacific cars which are not returned within the forty-eight-hour period. The complainants insist that with respect to these cars, which may be returned, and indeed must be returned, the rule is unreasonable and therefore unlawful, because the time allowed is too short. They insist that while it may be possible in some instances to make return of the car within the forty-eight-hour limit, it is not, as a practical matter, possible to do so in the majority of instances and that the requirement ought to be held void for this reason.

If the validity of this provision as applied to these cars depended upon the considerations stated by the complainants we should hardly be inclined to sustain their contention. The alleged purpose of the Union Pacific in paying this allowance at all is to obtain a prompt release of its equipment. It may therefore, in our opinion, properly fix a time limit within which such equipment shall be released. This limit must be a reasonable one, but we are not prepared to say that forty-eight hours for the return of these grain cars would be unreasonable.

It appears that railroads operating within the switching territory of Omaha and Council Bluffs have agreed on a period of four days as a suitable time to be allowed for the switch movement and the complainants urge that this shows the unreasonableness of the forty-eight hour limit; but it must be remembered that this applies to the handling of all kinds of traffic and that the free time allowed the shipper for the unloading of his freight is forty-eight hours, which is a part of the four days. This case shows that grain can be unloaded at elevators, and was unloaded at the elevators of these complainants, in from two to six hours after the placing of the car.

A representative of the Burlington road testified that in his opinion from four to four and a half days would be a reasonable time for the handling by his company of carloads of grain from the Union Pacific to the elevator of the Nebraska-Iowa Company and the return of the empty car. But this witness was examined at some length as to the detail of this movement and his answers go far toward warranting a finding that forty-eight hours would be sufficient if the car was in fact immediately unloaded. There are probably elevators within this switching territory from which the empty car could not be returned within the forty-eight hours, but it is not certain that the Union Pacific need allow a sufficient time for the return of these cars from all elevators, no matter how situated. It may not establish a rule the effect of which shall be to pay this allowance to elevators upon its own iron and nowhere else; but neither need it make the time so long that every elevator, no matter where located, can under all circumstances comply with it.

But even if it be assumed that forty-eight hours is a reasonable time within which to return Union Pacific equipment, still it must be held with respect to these cars, as in the case of foreign cars, that the condition is unlawful. This grain moves in all kinds of equipment, and to apply this time provision to Union Pacific cars when it can not be applied to others creates a necessary discrimination.

The case shows that from some elevators practically all cars which ever come back to the Union Pacific are returned within the forty-eight hours, but that from other elevators it is almost impossible to return any cars within that limit. This is for various reasons, but mainly because the switch movement is over two lines and therefore requires a longer time.

Assume, now, two elevators so situated that it is ordinarily impossible to comply with this provision. A carload of grain is shipped to one of these elevators in a Union Pacific car and upon that no elevation can accrue. The same quantity of grain is shipped to the other elevator in a foreign car, and upon that the elevation allowance must accrue. So long as this railroad indiscriminately furnishes

for the movement of this grain its own and foreign equipment it is impossible to make any application of this provision which will not result in discrimination between shippers. All these cars, no matter by whom owned, must, when tendered by the Union Pacific Company for the transportation of this grain, be accounted the cars of that company, and it must not establish any tariff regulation which will impose a higher rate for the transportation of grain when contained in one car than when shipped in another.

We find with respect to all the shipments involved in all these complaints that the provision in the tariff requiring a return to the Union Pacific Company of the car within forty-eight hours as a condition precedent to the payment of the allowance is unjust, unreasonable, unduly discriminatory, and unlawful, and that the complainants are entitled to damages by reason of the maintenance of such unlawful provision which equal the amount which would have accrued to them by way of this elevation allowance provided the tariff had contained no such provision. The Union Pacific Company has paid to the competitors of these complainants this elevation allowance. It has at the same time declined to pay it to the complainants. We find that its reason for so declining is not a valid one, and that the defendant has been guilty of an undue discrimination against the complainants, for which they are entitled to recover as damages the difference between what has been paid to their competitors and to them.

We find in case No. 1628, *Nebraska-Iowa Grain Company v. Union Pacific Railroad Company*:

That the complainant between July 2, 1906, and July 22, 1907, unloaded at its elevator 183 carloads of grain, containing in the aggregate 12,104,900 pounds, where the cars were returned to the Union Pacific within forty-eight hours; that upon 11,898,260 pounds of this amount the tariff allowance at the time it was unloaded was 1½ cents per 100 pounds, or \$1,487.28; that upon 206,640 pounds the allowance was at the time of its unloading ¾ cent per 100 pounds, or \$15.50, making a total of \$1,502.78.

That the said complainant between said dates unloaded 14 cars which belonged either to the road performing the switch service or to a direct connection within the switching territory and which were returned to the owner and never returned to the Union Pacific; that such cars contained in the aggregate 877,820 pounds of grain, and that the elevation allowance of 1½ cents per 100 pounds, the tariff rate in effect at the time of the unloading, amounted to \$109.73.

That the said complainant between said dates unloaded 110 cars belonging to foreign roads or to the Union Pacific which were returned to the Union Pacific Company more than forty-eight hours

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from the time they were received from that company; that the contents of these cars aggregated 7,722,040 pounds; that upon 6,961,500 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{2}$  cents per 100 pounds, or \$870.19; that upon 360,540 pounds the allowance at the time of its unloading was  $\frac{3}{4}$  cent per 100 pounds, or \$27.04, making a total of \$897.23.

That the said complainant did not unload any cars belonging to foreign roads having no direct connection within the switching territory.

We therefore find that the complainant Nebraska-Iowa Grain Company is entitled to recover of the defendant the sum of \$2,509.74 with interest at 6 per cent from July 22, 1907.

We find in case No. 1775, *Nye-Schneider-Fowler Grain Company v. Union Pacific Railroad Company*:

That the complainant between January 1, 1907, and December 31, 1907, unloaded at its elevator 4 carloads of grain, containing in the aggregate 211,780 pounds, where the cars were returned to the Union Pacific within forty-eight hours; that an elevation allowance of  $1\frac{1}{2}$  cents per 100 pounds was made, amounting to \$26.40.

That the said complainant between said dates unloaded at its elevator 126 cars belonging to foreign roads or the Union Pacific, which were returned to the Union Pacific Company more than forty-eight hours from the time that they were received from that company; the said cars aggregated 8,496,950 pounds; that upon 5,841,130 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{2}$  cents per 100 pounds, amounting to \$720.13, and that upon 2,655,820 pounds the allowance was at the time of its unloading  $\frac{3}{4}$  of a cent per 100 pounds, amounting to \$199.19, making a total of \$919.32.

That the said complainant between said dates unloaded 68 cars belonging to foreign roads having no direct connection within the switching territory and which were not returned to the Union Pacific Company; that the aggregate contents of said cars were 4,658,560 pounds; that upon 4,175,610 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{2}$  cents per 100 pounds or \$521.95, and that upon 482,950 pounds the allowance at the time of its unloading was  $\frac{3}{4}$  of a cent per 100 pounds, or \$36.22, making a total of \$558.17.

That the said complainant between said dates unloaded 8 cars which belonged either to the road performing the switch service or to a direct connection within the switching territory and which were returned to the owner and never returned to the Union Pacific; that said cars contained in the aggregate 507,540 pounds; that upon 372,930 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{2}$  cents per 100 pounds, or \$46.81, and that upon 134,610

pounds the allowance was at the time of its unloading  $\frac{3}{4}$  of a cent per 100 pounds, or \$10.09, making a total of \$56.90.

We therefore find that the complainant, Nye-Schneider-Fowler Grain Company, is entitled to recover of the defendant the sum of \$1,560.79 with interest at the rate of 6 per cent from December 31, 1907.

We find in case No. 1642, *Crowell Lumber and Grain Company v. the Union Pacific Railroad Company*:

That the complainant between August 10, 1906, and December 26, 1907, unloaded at its elevator 33 carloads of grain, containing in the aggregate 2,004,930 pounds, where the cars were returned to the Union Pacific within forty-eight hours; that upon 1,904,380 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{4}$  cents per 100 pounds, amounting to \$238.17, and upon 99,550 of this amount the tariff allowance at the time it was unloaded was  $\frac{3}{4}$  cent per 100 pounds, amounting to \$7.40, making a total of \$245.57.

That the said complainant between said dates unloaded 8 cars which belonged either to the road performing the switch service or to a direct connection within the switching territory and which were returned to the owner and never returned to the Union Pacific; that such cars contained in the aggregate 532,310 pounds of grain; that the elevation allowance at the time it was unloaded was  $1\frac{1}{4}$  cents per 100 pounds, amounting to \$66.54.

That the complainant between said dates unloaded at its elevator 58 cars belonging to foreign roads or to the Union Pacific Company, containing in the aggregate 3,669,340 pounds, which were returned to the Union Pacific more than forty-eight hours from the time they were received from that company. Of this amount, 2,199,550 pounds was on a tariff allowance of  $1\frac{1}{4}$  cents per 100 pounds at the time it was unloaded, or \$274.94, and that upon 1,469,790 pounds the allowance was, at the time of the unloading,  $\frac{3}{4}$  cent per 100 pounds, or \$110.24, making a total of \$385.18.

That the said complainant did not unload any cars belonging to foreign roads having no direct connection within the switching territory.

We, therefore, find that the complainant, Crowell Lumber & Grain Company, is entitled to recover of the defendant the sum of \$698.29, with interest at the rate of 6 per cent from December 26, 1907.

We find in case No. 1655, *Updike Grain Company v. Union Pacific Railroad Company*:

That the complainant between July 1, 1906, and July 1, 1907, unloaded at its elevator 103 carloads of grain, containing in the aggregate 6,457,140 pounds, where the cars were returned to the Union

Pacific within forty-eight hours, and upon this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{4}$  cents per 100 pounds, or \$807.14.

That the said complainant between said dates unloaded 313 cars which belonged either to the road performing the switch service or to a direct connection within the switching territory and which were returned to the owner and never returned to the Union Pacific Company; that such cars contained in the aggregate 20,585,820 pounds of grain, and that the elevation allowance of  $1\frac{1}{4}$  cents per 100 pounds, the tariff rate in effect at the time of the unloading, amounted to \$2,573.32.

That the said complainant between said dates unloaded 355 cars belonging to foreign roads having no direct connection within the switching territory and which were never returned to the Union Pacific Company. That the aggregate contents of said cars were 23,436,960 pounds of grain, and that the elevation allowance of  $1\frac{1}{4}$  cents per 100 pounds, the tariff rate in effect at the time of the unloading, amounted to \$2,929.62.

That the said complainant between said dates unloaded 54 cars belonging to foreign roads or to the Union Pacific which were returned to the Union Pacific Company more than forty-eight hours from the time they were received from that company. The contents of these cars aggregated 3,456,230 pounds of grain, and the elevation allowance, according to the tariff rates at the time of the unloading at  $1\frac{1}{4}$  cents per 100 pounds, amounted to \$432.02.

We find, therefore, that the complainant Updike Grain Company is entitled to recover of the defendant the sum of \$6,742.10 with interest at 6 per cent from July 1, 1907.

We find in case No. 1644, *Cavers Elevator Company v. Union Pacific Railroad Company*:

That the complainant between June 21, 1906, and July 9, 1907, unloaded at its elevator 6 carloads of grain, containing in the aggregate 423,185 pounds, where the cars were returned to the Union Pacific within forty-eight hours; that upon 390,005 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{4}$  cents per 100 pounds, or \$48.75, and that upon 33,180 pounds the allowance was at the time of its unloading  $\frac{3}{4}$  cent per 100 pounds, or \$2.49, making a total of \$51.24.

That the said complainant between said dates unloaded 41 cars which belonged either to the road performing the switch service or to a direct connection within the switching territory, and which were returned to the owner and never returned to the Union Pacific; that such cars contained in the aggregate 2,707,262 pounds; that upon

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2,478,442 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{4}$  cents per 100 pounds, or \$309.80, and that upon 228,820 pounds the allowance was at the time of its unloading  $\frac{1}{4}$  cent per 100 pounds, or \$17.16, making a total of \$326.96.

That the said complainant between said dates unloaded 40 cars belonging to foreign roads having no direct connection within the switching territory which were never returned to the Union Pacific; that the aggregate contents of said cars were 2,366,945 pounds; that upon 2,046,785 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{4}$  cents per 100 pounds, or \$255.84; and that upon 320,160 pounds the allowance was at the time of its unloading  $\frac{1}{4}$  cent per 100 pounds, or \$24.01, making a total of \$279.85.

That the said complainant between said dates unloaded 45 cars belonging to foreign roads or to the Union Pacific which were returned to the Union Pacific more than forty-eight hours from the time they were received from that company, containing in the aggregate 2,633,775 pounds; that upon 2,562,675 pounds of this amount the tariff allowance at the time it was unloaded was  $1\frac{1}{4}$  cents per 100 pounds, or \$340.33, and that upon 71,100 pounds the allowance at the time of its unloading was  $\frac{1}{4}$  cent per 100 pounds, or \$15.33, making a total of \$355.66.

We, therefore, find that the complainant Cavers Elevator Company is entitled to recover of the defendant the sum of \$1,013.71 with interest at the rate of 6 per cent from July 9, 1907.

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No. 1508.

PALMER &amp; MILLER

v.

LAKE ERIE &amp; WESTERN RAILROAD COMPANY ET AL.

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Submitted October 12, 1908. Decided January 7, 1909.

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Complaint in this case involves the question whether a charge of 14 cents per 100 pounds for the transportation of a carload of corn from Celina, Ohio, to Johnstown, Pa., is unreasonable; the only evidence submitted was that a lower rate is in effect between the same points via other routes; *Held*, That this alone is insufficient to establish that the rate in question is unreasonable. The complaint is dismissed.

*P. E. Kenney* for complainant.

*Henry J. Booth, J. W. Loree, John B. Cockrun, and William A. Parker* for defendants

## REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This is a complaint that the charge by defendants of 14 cents per 100 pounds for the transportation of a carload of corn weighing 44,000 pounds from Celina, Ohio, to Johnstown, Pa., is unreasonable and unjust to the extent that it exceeded 12 cents per 100 pounds. Reparation in the sum of \$8.80 is asked.

Complainant is engaged at Celina in the business of buying and selling grain and shipping it to various state and interstate points. June 14, 1907, it shipped a carload of corn weighing 44,000 pounds over the lines of defendants from Celina to Johnstown. The amount exacted for freight, at the rate of 14 cents per 100 pounds, was \$61.60. Celina is served by three railroads, namely, the Cincinnati & Northern, the Cincinnati, Hamilton & Dayton, and the Lake Erie & Western. Complainant's elevator is situated on the line of the Cincinnati & Northern, and grain routed via that line or via the Cincinnati, Hamilton & Dayton to Johnstown takes a 12-cent rate, as shown by tariffs on file.

It appears that most of the shipments by complainant to points east of Pittsburg which take the same rates as Johnstown are made over the Cincinnati & Northern and its connections, but occasional

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cars are sent over the Cincinnati, Hamilton & Dayton and its connections. On the date in question a car was tendered to the Lake Erie & Western at Celina and carried to destination over the lines of the defendants. An examination of tariffs on file shows that at the time the shipment moved the published rate via the Lake Erie & Western and the Baltimore & Ohio to Johnstown was 14 cents per 100 pounds. The defendants are required by law to charge their published rates, and when they do so, in the absence of a showing that the rate published is unjust and unreasonable and thereby unlawful, they entail no liability.

This brings into consideration the question whether complainant has shown that the charge of 14 cents by the defendants was unjust and unreasonable. The only showing made is that a less rate is charged from Celina to the same destination point over other routes. It is well settled that this fact, taken alone in the absence of any other evidence, does not establish that the rate complained of is unreasonable. No evidence was submitted as to comparative conditions of transportation over the different routes. The short-line distance via the Cincinnati & Northern and connections to Johnstown is 389 miles; over the Cincinnati, Hamilton & Dayton and connections 381 miles; and over the Lake Erie & Western and connections 378 miles. It further appears from tariffs on file that in 1897 the rate on grain from Celina via the Lake Erie & Western and connections to Johnstown was 13½ cents.

The tariffs from October 17, 1897, to September 1, 1905, do not show that the Lake Erie & Western carried a rate on grain from Celina. A tariff effective September 1, 1905, shows a rate of 13½ cents; one effective October 18, 1906, 13½ cents, and one effective April 1, 1907, 14 cents. It further appears that the routes over which the 12-cent rate is applicable are satisfactory to complainant except in rush seasons of the year, when there is a scarcity of cars. This, it is admitted, is of infrequent occurrence. Under all these circumstances, and no sufficient proof having been submitted by complainant and it not otherwise appearing that the 14-cent rate is unjust and unreasonable, the complaint is dismissed. An order will be entered accordingly.

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No. 1162.

BEATRICE CREAMERY COMPANY ET AL.  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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No. 1292.

FAIRMONT CREAMERY COMPANY ET AL.  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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No. 1541.

BLUE VALLEY CREAMERY COMPANY ET AL.  
v.  
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

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*Submitted December 1, 1908. Decided January 6, 1909.*

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1. Complainants, engaged in the operation of creameries and using the centralizer method, whereby supplies of cream are obtained by railroad as distinguished from the local creamery method which obtains cream by wagon, insist that defendants' schedule of rates for the transportation of cream to Chicago between Detroit and Port Huron upon the east and Colorado common points upon the west is too high, and ask the Commission to reduce it; *Held*, That, upon the facts disclosed in the record, the present rates are excessive. Defendants ordered to establish a scale of rates prescribed as a maximum. *Milk Producers' Protective Asso. v. D., L. & W. R. R. Co. et al.*, 7 I. C. C. Rep. 92, distinguished.
2. History of origin and development of the creamery business in the territory involved and the competing methods used, given and discussed.
3. Several intervening associations, and representatives from the Department of Agriculture, claimed that the local creamery method of manufacturing butter should, in the interest of the public, be fostered and the centralizer method be discouraged; but such is not the impression left by the record. The centralizer is engaged in a perfectly legitimate business enterprise and affords to hundreds of thousands of farmers the only satisfactory means of disposing of their milk. It seems plain that the duty of this Commission is to establish just and fair transportation charges in so far as that can be done and allow these rival methods to operate under those charges. The Commission should not establish a scale of rates with a view and for the purpose of fostering or discouraging either form of this industry.

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4. This Commission has several times held that where a particular industry has grown up under rates voluntarily established and maintained by carriers, these rates can not be advanced without considering the effect upon that industry. There is no such thing as a contract between the railway and the shipper that a certain rate shall be charged, for the railway rate is a matter of public concern, which can not ordinarily be made the subject of private contract, but in determining what is the just and reasonable thing to be done this Commission must consider the effect upon all parties.

*Mayer, Meyer & Austrian, E. J. Hainer, and T. F. Doran* for complainants.

*Blewett Lee* for Illinois Central Railroad Company.

*E. B. Peirce* for Chicago & Eastern Illinois Railroad Company and Chicago & Alton Railroad Company.

*A. G. Briggs* for Chicago Great Western Railway Company.

*Hale Holden, S. A. Lynde, and E. B. Peirce* for Chicago, Burlington & Quincy Railroad Company, Chicago & Northwestern Railway Company, and Chicago, Rock Island & Pacific Railway Company.

*J. L. Minnis* for Pacific Express Company.

*Olin & Butler* for Wisconsin Dairy Manufacturers and Milk Producers' Association et al., interveners.

#### REPORT OF THE COMMISSION.

##### *PROUTY, Commissioner:*

The above three cases, involving the same issues, were heard together, and stand for disposition upon a single record. The matters involved will be best understood by a brief statement of the occasion for the bringing of each of these proceedings.

The complainants are all engaged in the operation of creameries, and the rates involved are those upon cream transported by the various defendants to the different plants of the complainants.

Butter which is not consumed in the immediate vicinity of the place where it is made is at the present time produced almost entirely by creameries, of which there are two general classes, known in this case as local creameries and centralizers. For the purposes of this report the local creamery will be defined as one to which the milk and cream are brought by wagon; while the centralizer obtains its supplies of cream by railroad.

The complainants are all centralizers. The individuals who have been most active in the prosecution of these cases began in the local creamery. Not finding the business in that form a success in the territory where they began, they soon drifted into that method of operation which they are now pursuing. The reasons for this will be stated later; at present it need only be noted that the business of the centralizer was first established about 1889 at points in Kansas and Nebraska, either upon the Missouri River or a short distance to the west.

For the purpose of fostering this form of the industry railroads operating in that territory, most of whom are defendants in this proceeding, established certain rates for the transportation of cream from country stations to the centralizing plants.

These rates will be stated more in detail later in this report. The rate for the transportation of a 10-gallon can of cream 300 miles was substantially 33 cents, and this scheme of rates has been and may be here given the general designation of the 33-cent scale.

The business thus established prospered. New concerns came into it and the old ones grew until they had reached large proportions and began to extend into new fields of operation.

About 1905 two of these companies, the Beatrice Creamery Company and the Blue Valley Creamery Company, turned their attention to Chicago as a desirable point of operation. The territory around Chicago up to a radius of between 100 and 200 miles was drawn upon for the domestic supply of milk and cream for the city of Chicago, and the prices paid for this purpose were such that the complainants could not successfully purchase cream for the manufacture of butter in competition with its use for domestic purposes. It would therefore be necessary to draw the supply of cream used in Chicago from territory reached at a distance of between 200 and 400 miles.

There were in effect terminal rates for the transportation of this domestic milk and cream into the city of Chicago which were low, but these rates did not extend far enough to meet the necessities of the creamery. The scale of rates then in effect for the transportation of cream, for such distances as the creamery would be obliged to cover from Chicago, were upon a basis of about 60 cents per 10-gallon can for a distance of 300 miles, and this may be called for the purposes of this report the 60-cent scale. The Beatrice Company and the Blue Valley Company applied to the various lines reaching Chicago, representing to them that the 60-cent scale was prohibitive, and urging upon them the advisability of establishing the same scale into Chicago which most of the lines applied to were maintaining from points west of the Missouri River to the various centralizing plants. The lines so approached all insisted that this scale was too low, but certain of them did finally agree to establish rates upon a 38-cent basis, which would be 5 cents per 10-gallon can higher than the rates obtaining west of the Missouri River.

The Beatrice Company and the Blue Valley Company, relying upon the promises of these defendants and believing that the other lines entering Chicago would finally be induced to establish similar rates, proceeded to construct extensive plants in the city of Chicago for the manufacture of butter and to arrange for the purchase and transportation of cream to these plants.

Three of the defendants, namely: the Illinois Central, the Chicago, Rock Island & Pacific and the Chicago Great Western did, in accordance with their promises, establish rates upon a 38-cent basis. These rates were established in the fall of 1906 and under them the complainants began business. At the end of some nine months, in the spring and summer of 1907, these three defendants withdrew the 38-cent rate which they had put into effect and established new rates which were substantially a restoration of the 60-cent rate which had been in effect previous to the putting in of the 38-cent rate.

The action of these defendants in thus withdrawing the 38-cent basis of rates and the refusal of the other lines to establish into Chicago a lower rate than the 60-cent scale was the occasion of the bringing of the first suit above named, No. 1162, Beatrice Creamery Company et al. v. Illinois Central Railroad Company et al. This complaint is only in behalf of the Beatrice Company and the Blue Valley Company and refers alone to rates into Chicago.

While this proceeding was pending before the Commission all the carriers transporting cream by rail between Chicago on the east and the Rocky Mountains on the west reached a common understanding to establish in all this territory the same distance tariff for the transportation of cream and filed schedules accordingly. The rate named by these tariffs for transporting a 10-gallon can of cream 300 miles was about 70 cents, and this schedule may be referred to as the 70-cent tariff. It was a material advance over the 60-cent tariff, which certain of the defendants had already established into Chicago and which had been attacked by the complaint of the Beatrice and Blue Valley companies, and a much greater advance over the 33-cent basis previously maintained by the defendants to the west of the Missouri River. In consequence the second complaint, No. 1292, Fairmont Creamery Company et al. v. Illinois Central Railroad Company et al., was begun, in which 14 different centralizing creameries united against 19 railroads and 3 exoress companies in attacking the 70-cent schedule.

Coincident with the bringing of this complaint certain of the complainants obtained an injunction from the circuit court for the northern district of Illinois prohibiting the putting in of the 70-cent schedule, which is still in effect.

Three railroad systems entering Chicago from the east, the Michigan Central, the Pere Marquette, and the Grand Trunk, filed tariffs by which they attempted to establish rates peculiarly applicable to the transportation of butter fat or of cream intended for the manufacture of butter. The rates so established were about twice those previously in effect upon the same lines for the transportation of milk and cream for domestic use. The publication of these rates

resulted in the bringing of the third suit, No. 1541, Beatrice Creamery Company et al. v. Michigan Central Railway Company et al., and the obtaining of a second injunction from the circuit court against the collection of those rates, which is still in effect.

It will be seen therefore that cream rates charged by the several defendant railroads and express companies between Detroit and Port Huron upon the east and Colorado common points upon the west are involved in this proceeding.

The defendant carriers propose to establish in all this territory a common distance tariff for the transportation of cream upon all lines of railroad, except where terminal tariffs are in effect for the carriage of domestic milk and cream. The complainants insist that this schedule of rates is too high and ask the Commission to reduce it. Pending these proceedings the defendants, under the operation of the court injunctions referred to, are charging the rates which have been in effect for some years past.

Certain local creameries from the state of Wisconsin have intervened in the interest of the defendants, claiming that the 33 and 38 cent-scales unduly discriminate in favor of the complainants as centralizers against them as locals and certain other associations and organizations purporting to represent the general public have intervened to the same effect, upon the theory that it is for the public interest in Wisconsin, Minnesota, and Iowa that the local creamery be fostered and the centralizer discouraged. In support of this view representatives of the United States Department of Agriculture appeared and were heard, as were also the dairy commissioners from Wisconsin, Minnesota, South Dakota, and Iowa. The greater part of the testimony, which occupied in the taking nearly two weeks, was devoted to this branch of the case. While the Commission does not attach the same importance to these considerations which the parties themselves seem to have done, it is proper to refer briefly to the various claims put forward.

Until comparatively recent times the ordinary method of making butter in this country was to skim the cream by hand and churn it upon the farm. The idea of the first creamery was to gather cream skimmed by hand on the farm at some central point, there to be manufactured into butter. This kind of creamery never succeeded.

The invention of what is known as the "power" separator, taking advantage of the fact that the butter fat is lighter than the rest of the milk, and applying centrifugal force in the place of gravity, makes it possible to separate the cream from the milk without the tedious process of allowing the cream to rise. The first power separator required the application of considerable force for its operation, which was generally supplied by the steam or gasoline engine. It



rendered possible the creamery. The milk soon after being drawn from the cow could be brought to the creamery from the farm, and skimmed by the use of the separator, the skimmed milk being returned to the farmer to be fed upon his farm, while the cream was manufactured into butter at the creamery. This kind of creamery was and is called the whole milk creamery, for the reason that the milk is delivered to the creamery before being separated. Most local creameries are to-day of this kind, although many of them receive from the farmer both cream and milk, and some receive cream almost entirely.

As already indicated, several of the individuals who are now most prominent in the operation of centralizing plants began in the whole-milk creamery at various points in Kansas and Nebraska. It was when and because they had failed to succeed permanently with this form of creamery that they turned their attention to the method of centralizing, in which they are now engaged. The reason for their failure in the whole-milk creamery lay in the fact that the quantity of milk produced within a given radius in the localities in which they sought to operate was not sufficient to maintain a creamery of that kind.

There are certain fixed charges connected with the operation of a creamery which do not much depend upon the amount of butter produced; therefore cost of producing butter in a creamery is prohibitive unless a certain quantity can be manufactured. All the witnesses agreed that butter could not profitably be made at local creameries with an output of much less than 100,000 pounds per annum.

When these persons first established their local creameries in Kansas and Nebraska the farmers in those sections had sustained several crop failures; money was scarce and about the only farming venture which was certain to produce a cash return was the dairy. Under these conditions farmers could be induced to haul their milk as far as 15 miles to the creamery, and by covering a territory of this extent it was possible to operate with success. As soon, however, as better crops returned and other branches of farming became more profitable the farmer declined to haul milk for this distance. In actual experience it has been found that 5 or 6 miles is the limit beyond which milk can not be profitably so transported to the creamery, and these creameries in Kansas and Nebraska found themselves without sufficient patronage to justify their continuance.

Thereupon these gentlemen conceived the idea of establishing what were known as "skimming" stations; that is, plants at which the milk was received from the farmer and skimmed, the skimmed milk being returned to the farmer and the cream sent to some central point for the purpose of being made into butter. The first 33-cent rate on cream established by the defendants was for the purpose of handling

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cream from these skimming stations to the butter-making plant. The skimming station in these sections was not a success for the reason, again, that the expense of operation was too heavy in proportion to the quantity of business transacted.

About this time what is known as the "hand" separator came into general use. This device separates the cream from the milk upon the same principle and with the same efficiency as the larger power separator, but handles a much less quantity of milk in a given time and requires for its operation so little power that it can be run by hand. This renders it possible for every farmer to skim his own milk immediately after the milking. The process of skimming reduces the bulk of the milk from five to ten times. On an average seven gallons of milk produce about one gallon of cream.

The use of the hand separator therefore reduces the cost of the transportation of that part of the milk which finally goes into butter. There is this further advantage—while milk must be separated soon after the milking, cream need not be churned for some days. Cream can therefore be transported several hundred miles by rail to the point of manufacture and need not be taken by the farmer to the railroad station more than three times per week in summer and twice in winter. The farmer also has for feeding at home skimmed milk, which has not been injured by transportation nor contaminated by poor milk from other dairies.

As defined in this report, the local creamery is that creamery whose supply of milk or of cream is brought in by team, while the centralizer obtains its supply by rail. In point of fact, even at the present time, the two shade into one another. There are local creameries which receive a small portion of their cream by rail. There are centralizers to whose plants some portion of their supplies are brought by wagon. Some centralizers operate upon a small scale, bringing in their supplies from a radius of 60 or 100 miles; while others stretch out for distances as great as 600 miles.

Two general methods are employed by the centralizer in the purchase of cream. Under the first method the cream is shipped into the manufacturing plant by the farmer. This method is well illustrated by the operations of the Blue Valley Creamery Company.

This company has factories located at St. Joseph, Mo., Sioux City, Iowa, and Chicago, Ill. It circulates over almost all territory covered by this proceeding, its literature setting forth the advantages of its method of operation and inviting the shipment of cream to its various plants. It also employs to some extent soliciting agents whose business it is to travel about from place to place for the purpose of persuading farmers to ship their cream to the Blue Valley Company.

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The farmer desiring to patronize that enterprise takes his cream to the railway station and sends it to the creamery. At the creamery it is received by the Blue Valley Company; is tested for the purpose of ascertaining the amount of butter fat contained, and is paid for either by each shipment or by the week or the month, according as the farmer may prefer. While there seem to be different grades of cream which command slightly different prices, the testimony shows that the same price is paid for the same grade by this company to all shippers, whether large or small. The business of the company appears to be conducted in a straightforward manner and to the general satisfaction of its patrons, and a large business has been developed.

This method of carrying on the business is, however, at long range. In order to induce the farmer to bring in his cream, it is necessary as a rule to come into more intimate contact with him. In this view most creameries receive the cream, not at their manufacturing plants, but at the railroad station to which it is brought by the farmer. For this purpose receiving stations are established at which the cream is taken, weighed, and usually paid for. All creameries, both local and centralizers, pay not for the amount of cream or milk but for the butter fat contained, and in order to determine the amount of this butter fat it is necessary to test each lot offered for sale. This test is sometimes made by the centralizer at the receiving station and sometimes at the centralizing plant. When it is to be tested at the central plant, a small sample is withdrawn in the presence of the farmer and sent on to the plant along with the cream. Payment is made according to the wishes of the farmer.

By far the larger portion of all the cream purchased by centralizers is upon the latter plan. It will be seen that under the plan of the Blue Valley Company the farmer in all cases pays the transportation charge. The price which he receives is a delivered price, so that the net result to him depends upon his location and his rate. He bears the burden of any increase in that rate. An advance only injures the Blue Valley Company, in that if the rate is too high the price to the farmer is not satisfactory and he will no longer ship. Under the second plan the centralizer in all cases pays the freight, and it appears that the price paid to the farmer does not vary much with the distance from the centralizing plant.

The interveners insist that the true interests of the dairy industry in this country lie with the local creamery and that the operations of the centralizer are inimical to those interests. It seemed to be the impression of the representatives of the Department of Agriculture, who appeared before the Commission, and also of the dairy commissioners of the various states, that the local creamery should be

fostered and the centralizer discouraged. For this, several reasons are given:

It is said, in the first place, that the local creamery produces better butter than the centralizer, and that the true interest both of the farmer and of the consumer of the butter required the production of the best possible article, even though the cost of producing it may be somewhat more.

The local creamery receives a large part of its supplies in milk which is never brought to the creamery more than twelve hours after it is drawn from the cow, and which often comes there immediately after milking. This milk is therefore sweet, so that the creamery can watch over and regulate all the subsequent processes until it becomes manufactured butter. Cream must be soured before being churned, but that is a bacterial process which should be properly controlled by the manufacturer, and can be in the local creamery.

Upon the other hand, the cream used by the centralizer is delivered at the railroad station two and often three or four days after being separated, and an additional period of from twelve to twenty-four hours, and often longer, intervenes before it reaches the manufacturing plant. Generally, even in summer time, no refrigeration is used. The process of fermentation has therefore much further advanced before the cream comes into the possession of the butter maker with the centralizer than with the local creamery, and it is said that this of necessity results in a poorer grade of butter.

It would seem to be almost self-evident that butter might be made at the local creamery from the sweet milk and cream, with which it operates, of a finer flavor, a sweeter aroma, and which, in thought at least, would be more wholesome than when manufactured out of cream transported by rail for hundreds of miles; and the testimony shows that the best grades of butter from local creameries do command a higher price than the butter manufactured by these centralizing plants.

At the same time the product of the centralizer is perfectly wholesome. When once the cream reaches the manufacturing establishment it passes under the care of the most expert workmen, using the highest grade of appliances. In the local creamery the labor is not always of the best and sanitary arrangements are frequently deficient. So that while the best creamery butter commands the highest price and is the choicest article produced, there is much creamery butter which is inferior to the product of the centralizing establishments. The product of the centralizer, as already stated, is perfectly wholesome, and is superior to much of the butter manufactured by local creameries and upon the farm.

The second claim of the interveners is that the farmer receives more for his butter fat from the local creamery than from the centralizer.

A given local creamery draws its supplies from a radius of 6 or 7 miles. Generally but one creamery operates within a given territory. While it may often happen that the operations of different local creameries will to some extent overlap, still, broadly speaking, it may be said that within its territory a given local creamery is the only one which purchases milk or cream.

- This is another way of saying that the local creamery has an absolute monopoly of the purchase of milk within its field of operation. The farmer can not to-day successfully make butter upon the farm. He must sell his milk or his cream to some other person for manufacture. The only check therefore upon the price which the local creamery pays to the farmer is the possibility of the establishment of another creamery and whatever competition may come from the centralizer.

As a practical proposition, still another safeguard is found in the cooperative creamery. Here the stock is either paid a certain dividend and the balance of the profits divided among the patrons, or the patrons themselves own and operate the creamery. The record in this case shows that this cooperative plan has been very rapidly gaining ground for the last dozen years and is coming to be, if it is not already, the dominant style of local operation. The opinion was expressed by the Government's witnesses and the commissioners from the various states that this cooperative idea, as applied to the creamery, afforded the best system, since it protected the farmer in the price received while securing the advantages of the local operation.

While from its nature the local creamery is a monopoly, the centralizer is exactly the reverse. Take for instance the Blue Valley Creamery. This company, it will be remembered, has manufacturing plants at St. Joseph, Mo., Sioux City, Iowa, and Chicago, Ill. It reaches out for cream a distance of 500 miles in all directions from these localities. It therefore covers practically the entire territory embraced in this proceeding. Any farmer, in all that territory can take his cream to the railroad station, provided the rates are properly adjusted, can ship it to this company and will receive exactly the same price less the transportation charge which is paid others. Certainly no plan could be devised which, if honestly and fairly carried out as this seems to be, could afford more perfect competitive conditions.

Under the other centralizing plan the same thing is true, although not in the same degree. These other companies as a rule receive at the railway station in much the same way as the grain buyer. But here again a single operator covers an extensive territory;

different operators must inevitably do business in the same territory, and therefore against each other. While there are only some fourteen complainants in this proceeding, there are a great many centralizers in the territory under consideration, and their number seems likely to increase rather than to diminish. There will inevitably be here, as in every situation of this kind, attempts to restrain competition; territory will be divided; prices agreed upon; but still when the number of these operations is considered, when it is remembered especially that the Blue Valley Company affords in all this territory a check upon an unreasonable price—for it must pay substantially the price paid by other creameries in competition with it—it is hardly credible that the price paid by the centralizer will ever be for a very long time much below a reasonable price. It may be fairly assumed that the farmer will obtain under either plan about all the creamery, whether local or centralizer, can afford to pay. It is therefore pertinent to inquire under which plan the process of manufacturing butter can be most cheaply conducted, or rather which plan offers the wider margin between the price received for the butter and the cost of producing it, upon the assumption that the same price is paid for the butter fat.

Apparently the cost of transportation from the farmer to the final consumer of the butter is in favor of the local creamery. The cost of getting the cream to the station, where it is received by the centralizer, and the cost of getting the milk to the local creamery can not very much differ. Where the milk itself is taken to the creamery the cost of carrying it is greater to the farmer; but upon the other hand he avoids the annoyance and expense of separating his cream and the expense of procuring necessary apparatus for that purpose. Since most local creameries will receive either the cream or the milk he has his option, and if the advantage is in favor of the cream delivery then he can transport the cream. The average haul to the creamery is somewhat longer than to the railway station; but on the other hand farmers are able to unite in carrying their milk or their cream to the creamery, and the creamery itself can sometimes gather it at a less cost than the farmer could transport it, so that on the whole it seems probable that the supplies of the local creamery can be laid down to it for about the same expense that the cream can be taken to the railway station.

Therefore, in determining the total cost of transportation we must add the cost of carrying the cream by rail to the plant of the centralizer. When this carriage is in the direction that the butter will finally be shipped, so that the butter when manufactured is nearer the point of final consumption, something is saved on the freight rate to be paid by the butter; but it must be remembered that 100 pounds

in weight of cream and can will produce less than 30 pounds of butter, so that there is an actual transportation waste of 70 pounds out of every hundred; and in addition to this the receptacle must be returned. It seems apparent, looking to the economics of this question, that the transportation cost is materially in favor of the local creamery which concentrates the milk in the highest degree before transportation by rail has begun.

The cost of manufacturing, after the cream has reached the creamery, is less in case of the centralizer. The reasons for this pretty fully appear in the record and need not be stated. Suffice it to say that all parties agree that a creamery can not be successfully operated unless it manufactures about 100,000 pounds of butter a year. The cost of manufacturing to such a creamery is about 4 cents per pound. This cost rapidly decreases as the quantity of butter manufactured increases. The cost of manufacturing at the plant of the complainants is only about 1 cent per pound, and in the larger local creameries the cost is often reduced to between 1 and 2 cents per pound.

While no exact finding can be made it seems probable that this saving of the centralizer in the cost of manufacture about offsets the additional cost of transportation, so that on the average the butter itself costs the local creamery and the centralizer about the same. Apparently the local creamery receives a somewhat better price for its product than the centralizer, at least it might if both methods were conducted in the highest state of the art. Upon the assumption that the farmer is paid all that either party can afford to pay, it seems probable that he would realize through the local creamery slightly more for his butter fat than from the centralizer. In other words, where conditions are adapted to the operation of the local creamery, and this means where the production of milk is sufficient so that the local creamery can obtain an adequate supply, this milk can be turned into butter more to the advantage of the farmer by the local creamery than by the centralizer.

The interveners insist that the operations of the centralizers should be discouraged because the centralizer is guilty of unfair methods in its competition with the local creamery. It is alleged that it has been the practice of centralizers in the past to select a particular locality in which a local creamery was operating, to pay in that locality higher prices than were paid by the local creamery and higher prices than were paid by the centralizer itself at other points in the immediate vicinity where the price would naturally be the same. Having diverted the milk from the local institution by this higher price and driven it out of business, the centralizer thereupon reduces the price to the farmer, paying less in the end than the local creamery was paying at the outset.

It is perfectly evident that this method of attack upon the local creamery might, from the very manner in which the business of the centralizer is conducted, be pursued. The testimony in this case indicates that in some instances this has been done. Our impression is that on the whole there has been very much less friction between local institutions and centralizers than might naturally be expected to arise, but there have been cases where a good deal of feeling existed and where the centralizer has advanced the price for the purpose of putting out of business the local creamery. This seems usually to have been done as a matter of retaliation against what were thought to be the unfair practices of the local creamery itself. On the whole this case discloses nothing on the part of these petitioners which would justify us in finding even a disposition to engage in such unfair competition upon their part.

The general situation must be kept clearly in mind. The local creamery can only exist profitably when it can manufacture 100,000 pounds and upward of butter annually. Mr. Webster said that he thought butter ought to be manufactured at the local creamery when it could be done for 4 cents per pound and less, and the testimony shows that this is about the price where the output is as above stated. To-day farmers will not haul milk more than 6 or 7 miles to the local creamery. Cream can be transported by wagon profitably somewhat longer distances, but it may be generally stated that the local creamery can only operate profitably where sufficient milk is produced within a radius of half a dozen miles to manufacture 100,000 pounds of butter per annum. Now, there are vast areas in the territory covered by this complaint, producing at the present time milk from which millions of pounds of butter are annually made, in which the local creamery, under the above test, could not exist, for the reason that the cow population is not sufficiently dense to produce the necessary quantity of milk within the prescribed area. In all this territory the centralizer affords to the farmer the only means of disposing of his cream. To strike down the centralizer would be to strike down the dairy interests in these sections. This territory includes almost all the states of Kansas and Nebraska, much of Missouri, considerable of Iowa, and some of Minnesota and South Dakota.

Upon the other hand there are certain other regions where the local creamery can and does operate. These conditions exist in Wisconsin, most of Minnesota and Iowa, and in much of Michigan. It is impossible to forecast what effect the use of the hand separator may produce in the future, but to-day the centralizer can not operate upon any fair basis of transportation charges in these sections.

The trouble comes in the borderland, of which there is much. Here, for example, is a local creamery; it was perhaps established by

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some promoter for the purpose of selling his machinery; its original location was ill-advised; it has never manufactured 100,000 pounds of butter per annum. It does not perhaps operate at all during the winter months; if cooperative, its returns to its patrons are unsatisfactory; if individual, it pays little or nothing upon its stock, although the price paid its patrons for milk is low. Now the advent of the centralizer into the territory of that creamery means its destruction. Its present supply of milk is inadequate, and when a quarter or a half of that milk is taken away it must cease operations altogether. The centralizer does not need to pay an extravagant price for milk in competition with this creamery, for the price paid by the creamery itself was already low.

Even though this creamery had been manufacturing about the limit of 100,000 pounds, still the coming of the centralizer by taking away even a small part of its supplies would seriously interfere with the operation of the creamery; and such has been the history of this matter in a great deal of the territory coming under our observation. The effect of the centralizer has undoubtedly been to decrease the number of local creameries. This has been particularly true in Iowa. It has also been true in certain sections of Minnesota and in South Dakota.

It should be carefully noted that the final result in most of these cases is to increase the price paid the farmer for his cream. It is only because the centralizer can afford to pay a higher price than the local creamery that the field has fallen into the hands of the centralizer. The argument made by the Government against this proposition that the farmer is better off under the centralizer than under the local creamery is that while this may be so for the time being, if the local creamery could be let alone, it would in time develop a condition of things which would warrant its profitable existence.

It is difficult to see how there can be centralizers and locals without competition of this kind, and competition can not exist and never does exist without producing some friction and some discomfort. Competition of this sort, even though rates are fairly adjusted, and even though all parties act in the utmost good faith and with the utmost consideration, can only be prevented by delegating to some person authority to say that within a certain section the farmer can sell his milk to the local creamery, and that in other sections he may sell to the centralizer, a proposition to which the people of this country are hardly ready to subscribe.

It is also alleged by the local creamery that the competition of the centralizer has tended to deteriorate the quality of butter produced by the local.

Where several centralizers are purchasing cream at the same railroad station, the same price must of necessity be paid by all. An

advance by one must be met by every other buyer. Cream is not always delivered at these receiving stations in good order, and for the purpose of preventing this, different grades have been established, for which different prices are paid. If the farmer brings in his cream in good order he receives the highest price; if in poor order, a lower price is allowed. These grades rest in the discretion of the one who receives the cream, and in fixing them a certain amount of latitude is possible, and in this way certain competition may arise, one receiving agent giving a higher grade and thereby a higher price for a poor quality of cream than another.

The same thing is true when the centralizer competes with the local creamery. As long as the local is the only purchaser within that territory it can insist that the farmer shall tender his milk or his cream in good order; he must observe proper conditions of cleanliness and he must bring in his product within a sufficiently short time. If, however, other buyers are operating in the same territory, there is a continual tendency to dispense with these requirements, and this affects the quality of the product itself. There is much complaint that local creameries in order to obtain their supplies are obliged to receive, in individual cases, an inferior article when in competition with the centralizer, which they need not do otherwise. This, however, is but another necessary incident of the competitive condition.

It has been previously observed that a large portion of this very voluminous record is taken up by testimony bearing upon the merits of these respective methods of manufacturing butter and the manner in which the centralizers and locals now operate. When the testimony was offered it was difficult to see how it had much bearing upon the question before the Commission, but inasmuch as great importance seemed to be attached to it by the Department of Agriculture, as well as by the representatives of the various states interested, it was thought proper to receive the testimony. An examination of the situation confirms our first impression. The interveners regard the centralizer as a party whose operations should be controlled by a strong hand. The Department of Agriculture seems to share to some extent in this feeling. Such is not the impression left by this record. The centralizer is engaged in a perfectly legitimate business enterprise by methods which may be and usually are legitimate. The centralizer affords to hundreds of thousands of farmers the only satisfactory means of disposing of their milk. A blow at the centralizer is a blow at every farmer who produces butter fat in thousands of square miles of the territory covered by this proceeding. It seems plain that the duty of this Commission is to establish just and fair transportation charges in so far as that can be done and allow these

rival methods to operate under those charges. We should not establish a scale of rates with a view and for the purpose of fostering or discouraging either form of this industry.

The pertinent fact from all this mass of evidence to be considered by us is this: The local and the centralizer are in active competition; the transportation charge which the centralizer pays on the cream to its manufacturing plant determines often whether that cream shall be manufactured by it or by some local creamery. It is therefore the right of the local creamery to insist that the defendant railways and this Commission shall not establish charges of transportation which are unjust or ridiculously low and which give therefore to the centralizer an unnatural advantage.

As stated in the opening paragraphs of this report, the defendants have at different times, and upon different parts of their systems, maintained various scales of rates for the handling of this cream, and those scales have been designated for convenience by the amount charged for transporting a 10-gallon can a distance of about 300 miles.

The 33-cent scale was the one first established by the defendants west of the Missouri River, and which they maintained up to 1907. The 38-cent scale is the basis of rates which certain lines centering at Chicago agreed to establish and did establish for a time as terminal rates to Chicago for the use of the Blue Valley Creamery and the Beatrice Company. The 60-cent scale was the scale of rates generally in effect upon the lines of the defendants operating into Chicago previous to the putting in of the 38-cent scale, and which was restored when the 38-cent scale was canceled in the spring of 1907. This is the scale of rates which is now being charged by carriers operating into Chicago. The 70-cent scale is the distance tariff which all these defendant companies by common understanding were about establishing when enjoined by court process.

The complainants insist that the 33-cent scale should be fixed by the Commission as applicable in all the territory under consideration. The defendants contend that the 70-cent scale is reasonable, and that they should be permitted to put that scale into effect.

Since this controversy arose between the complainants and the defendants state commissions in two states have established rates for the carriage of cream, namely, Nebraska and Wisconsin. Below is given a table showing for distances up to 500 miles the 33-cent scale, the 38-cent scale, the 60-cent scale, the 70-cent scale, and the rates established by the two commissions.

Distances.	32c. scale.	38c. scale.	60c. scale.	70c. scale.	Nebraska commission rates.	Wisconsin commission rates.
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
20	15	.....	20	25	15	13
25	15	.....	20	25	16	15
30	15	.....	21	25	17	16.5
35	17	.....	21	27	18	17.5
40	17	.....	21	27	19	18.5
45	18	.....	21	28	20	19.5
50	18	.....	21	28	21	20
60	19	.....	22	29	22	20.7
70	20	.....	24	31	23	21.5
80	21	.....	26	32	24	22.5
90	22	.....	28	33	25	23.3
100	23	.....	30	35	26	24
105	24	.....	31	36	27	.....
110	24	.....	32	37	27	25
115	25	.....	33	39	28	.....
120	25	.....	34	41	28	27
125	26	.....	35	43	29	.....
130	26	.....	36	44	29	30
135	27	26	37	45	30	.....
140	27	26	38	47	30	32
145	28	27	39	48	31	.....
150	28	28	40	50	31	35
160	29	32	42	55	32	37
170	30	34	44	55	32	38
180	30	35	46	56	33	39
190	30	35	48	55	33	40
200	30	35	50	55	34	41
210	31	36	51	60	35	.....
220	31	36	52	60	36	42
230	31	36	53	60	37	.....
240	31	36	54	60	38	44
250	32	37	55	60	39	.....
260	32	37	56	65	40	46
270	32	37	57	65	41	.....
280	32	37	58	65	42	48
290	33	38	59	65	43	.....
300	33	38	60	65	44	50
320	34	39	61	70	46	.....
340	34	39	62	70	48	.....
350	35	40	63	70	50	.....
375	35	40	64	75	52	.....
400	36	41	65	75	54	.....
420	36	41	66	80	56	.....
440	37	42	67	80	58	.....
460	37	42	68	80	60	.....
480	38	43	69	80	62	.....
500	38	43	70	80	64	.....
560	.....	.....	73	85	66	.....
600	.....	.....	75	85	68	.....

The complainants base their contention that the defendants should be required to maintain the 33-cent scale mainly upon the fact that originally that schedule of charges was voluntarily established by them and has for many years been observed. Those of the defendants operating lines west of the Missouri River did from about 1888 up to 1894 put in effect and have since maintained rates for the transportation of cream which are approximately those stated in this report as the 33-cent scale. The rates charged by all the carriers were not uniform, but generally speaking they were substantially those indicated.

As a rule these rates apply from points west of the Missouri River up to stations upon the river, or to points like Lincoln, a short distance to the west. They also apply in some instances from the east to the river, notably from points in Missouri and southern Iowa to Kansas City and St. Joseph, Mo. The testimony also indicates, although we have not thought it necessary to examine the tariffs upon this point, that similar rates were established in the Dakotas and in Minnesota to Sioux City, Iowa, and to St. Paul and Minneapolis.

The defendants insist that while these rates were voluntarily established and maintained by them the effect of the admission implied by this course of action is altogether destroyed by the circumstances under which the rates were put in. It is conceded that at the time of their inauguration this whole territory west of the Missouri River was in distressed circumstances. There had been repeated crop failures and the price of what had been produced was extremely low. There was no money in the country and the people were leaving it. The dairy industry seemed to offer a means of providing some small amount of ready cash and of initiating a business which subsequently might be of great benefit to the country. In this view the railroads co-operated with these centralizers in the establishment of these rates in order that the centralizer might be able to present to the farmer a proposition sufficiently attractive to insure his acceptance.

Some suggestion is made in the record that these rates were established as milk rates and without any adequate comprehension upon the part of the defendants of the use to which they were to be put. Such is not the fact as disclosed by this record. These rates were fixed for the express purpose of transporting cream which was to be manufactured into butter at the centralizing plant, because in no other way could the creamery successfully operate.

These defendants have, since the rates were established, done much in the way of circulating advertising matter, of giving free transportation to supplies necessary to foster this industry, and free transportation of persons engaged in promoting it. But they urge that this has not been done under the supposition that the rates charged

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for the carriage of this cream were compensatory, but in order to build up an industry which would benefit the country and therefore indirectly benefit them.

The facts are as claimed by the defendants, and there is very great force in the contention which they put forward. Looking not to the business of the centralizer but to the dairy interest, which the centralizer and these rates have promoted, it may well be said that that industry to-day is able to pay somewhat higher transportation charges, if these charges are reasonable, than could be paid when this business was first initiated. The farmers who produce this traffic can not legitimately complain of an advance in these charges, provided such advance is otherwise just.

The complainants assert, however, that any advance in these rates must be borne by them, and that the advances proposed virtually confiscate the property which they have invested.

The testimony shows that the complainants have put large sums of money into the construction of their manufacturing plants. The sixteen complainants who are parties to this proceeding estimate that the amount of their investment is some three millions of dollars. Without undertaking to determine the exact amount it is certain that the sum is very considerable. The profit of the complainants from the manufacture of butter is said to have been in the past not exceeding  $\frac{1}{2}$  cent per pound. The advances in the transportation charges contemplated by the proposed schedule of the defendants; that is, the 70-cent schedule, would amount on an average to nearly 1 cent per pound, or twice the entire profit of the complainants. If, therefore, these complainants must bear that charge it would seem evident that the establishment of that schedule would virtually confiscate their property.

It does not seem reasonable to suppose that this advance would, as a rule, fall upon the centralizer. We have seen that in a large part of the territory in which the centralizer now operates local creameries can not, in the very nature of things, exist. The centralizer must continue to do business if the dairy business is conducted at all. The question is, therefore, whether the farmer, if forced to bear this increase, would turn from the dairy business to other kinds of occupation. There is little warrant for any such anticipation. As already suggested, the increases would not exceed 1 cent per pound of the price paid for butter fat, or perhaps  $1\frac{1}{2}$  cents per pound in the price of the total amount of butter made. The price paid the farmer varies at different seasons of the year from 20 to 27 or 28 cents per pound, and the variation in the average price in recent years has been much more than 1 cent per pound. It is hardly credible, therefore, that if the price paid by the centralizer to the farmer for

his butter fat were to be decreased by 1 cent per pound this would have any very serious effect upon the amount of cream received by the centralizer in those regions where the local creamery can not thrive. The loss would be borne by the farmer, and the increase ought not to be made unless the increased rate is a just and reasonable one; but the increase would not ruin the centralizing plant, nor would it destroy the dairy industry which is dependent upon the centralizer.

In those regions where the business may be said to be fairly competitive between the local creamery and the centralizer the advance would have a most serious effect upon the business of the centralizer. One cent per pound in the price paid for butter fat would generally determine whether the local or the centralizer was to do the business.

While, therefore, we can not accept the position of the complainants that these increases would destroy their business, it is fair to assume that it would seriously affect their present business in some localities and would interfere with the future development of that business.

This Commission has several times held that where a particular industry has grown up under rates voluntarily established and maintained by carriers these rates can not be advanced without considering the effect upon that industry. There is no such thing as a contract between the railway and the shipper that a certain rate shall be charged, for the railway rate is a matter of public concern, which can not ordinarily be made the subject of private contract, but in determining what is the just and reasonable thing to be done this Commission must consider the effect upon all parties. *Banner Milling Co. et al. v. N. Y. C. & H. R. R. Co. et al.*, 14 I. C. C. Rep., 398; *Western Oregon Lumber Manufacturers' Asso. et al. v. S. P. Co. et al.*, 14 I. C. C. Rep., 61.

It has never been held, however, that the effect on any party, either the railway or the shipper, could justify what would otherwise be an unlawful rate. The Supreme Court of the United States held in *New York, New Haven & Hartford Railroad Company v. Interstate Commerce Commission*, 200 U. S., 361, that even though a contract were valid at the outset it became void whenever in the process of time, owing to changed conditions, its execution resulted in a violation of the act to regulate commerce. So in this case, if an application of these rates to actual conditions works a discrimination against the local creamery the rates are for that reason unlawful and should not be maintained, no matter what the effect upon the business or the property rights of the complainants may be.

It has been suggested that we might establish different rates to different territories according to the local conditions prevailing in each. If it were possible to consider Nebraska and Wisconsin as

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entirely separate and distinct, we might possibly come to the conclusion that a different scale of rates ought to be established in one state than in the other. There is no absolute rule by which the reasonableness of these rates can be determined, and the conditions in these two states are entirely different. The rates actually established by the respective state commissions are entirely different. If we could establish one scale of rates in that territory where the centralizer must operate and another scale in that territory where he can not, and probably ought not to operate, then we might fix a lower basis of transportation charges in that territory where these lower rates have prevailed and where the investments of these complainants have been made upon the strength of those rates.

The difficulty in doing that is that we are called upon to establish rates which are applicable in all parts of this territory, and the sections in which conditions differ so insensibly pass into one another that it is impossible to draw any lines of demarcation which would properly define the territory in which the lower rate or the higher rate should prevail. These rates again are fixed for the future and the conditions in all parts of this territory are continually varying. The only feasible course therefore seems to be to establish a general scale applicable to all points.

Cream is transported in 5, 8, and 10 gallon cans, and we are asked to establish rates applicable to all these sizes, but the 10-gallon can is the one generally in use, and this discussion will have reference mainly to cans of that capacity.

The service which these complainants require is upon passenger trains. While this cream might possibly be transported upon freight trains under refrigeration, this is never done. The trains which collect this cream must of necessity be those which stop at substantially all stations—the local passenger trains. Cream is sometimes carried upon mixed trains, and a carload of cream, after it has been collected, is sometimes attached to an express train and carried through to destination, but the service rendered will be properly expressed on the average by saying that it is performed by the local passenger trains of the defendants.

This cream is usually carried in baggage cars. When the rates were first established this was invariably so. As time went on the business so grew upon the Burlington system west of the Missouri River that special cream cars were employed, and a large portion of the cream handled upon that road is now in this special equipment, of which there are 20 cars. It did not appear that special cars were used upon other lines. These cars of the Burlington run in the summer time under refrigeration, and are accompanied by a special messenger, for which an additional charge of 2 cents per can is made under arrangement with the shippers.



The shipper places the can of cream upon the station platform, from which it is loaded into the car by the carrier. At the point of delivery the cans are taken out of the car by the carrier and placed upon the platform where they are received by the shipper, except that in some cases the car itself is switched to the creamery, in which event the unloading is performed by the creamery employees. In returning the empty cans, which is done as a part of the rate, the service is reversed.

It is extremely difficult to find any measure for the fixing of a reasonable rate for a service of this character. At the outset this service was in the nature of surplus transportation. The train must run, the baggage car was there, the station man and the baggage man must be employed in any event; it added nothing to the cost of labor, nothing to the cost of equipment, and practically nothing to the cost of movement to handle this traffic. These rates seem to have been in a way established upon that theory. They can not to-day be fixed by the Commission in that view. The business has been already developed upon the Burlington to the extent that special cars are employed, and it may at any day overtax the baggage-car capacity of any of the defendants. The use of the hand separator is liable to do away with the whole milk creamery, and in that event the transportation of cream by rail for short distances is almost certain to become much more general than it is to-day. These defendants under the rates fixed by us must provide this transportation, even though the present space in their baggage cars should not be sufficient, and this must be kept in mind in establishing these rates. They are not merely terminal rates intended for a few places, but are rates of general application which are likely to be generally used.

There is some analogy between the handling of the United States mails and the transportation of this cream. Both are upon passenger trains, and both are in baggage cars, or in cars a part or all of which is devoted to the special service. The government official generally receives the mail at the car door and cares for it inside the car, but the railroad frequently performs a considerable service in transporting the mail from the car to the post-office.

It will be remembered that the only railroad system devoting special equipment to this milk service is the Burlington. The passenger traffic manager of that system testified that its milk cars averaged to earn during the year 1907, upon lines west of the Missouri River, about 14 cents per car mile, while his company received upon the same lines about 19 cents per car mile under their mail contracts. It will be remembered that the low 33-cent rate applies west of the Missouri River. There is no evidence tending to show the comparative profit to other companies from the handling of mail and milk or cream.

The defendants have compared these rates with rates imposed for the transportation of similar articles by express and by freight.

Products of the farm are generally handled by express companies under their general-special rates, which are somewhat lower than the regular merchandise rates. Under the Western Classification butter in less than carloads takes the second class rate. The Northwestern line may be selected as fairly illustrative of the general level of express and freight rates in territory covered by this complaint. Below are given these rates from Omaha to certain points upon that line.

*Rates from Omaha.*

To—	Distance.	General-special ex-press.	Second-class freight.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Missouri Valley, Iowa.....	25.4	40	14.96
Carroll, Iowa.....	95.8	60	19.72
Marshalltown, Iowa.....	206.8	100	31.18
Stanwood, Iowa.....	302.7	120	40.60
Chicago, Ill.....	492.5	150	65.00

From an examination of this table it will be seen that express rates for all the distances are materially higher than even the rates suggested by the 70-cent scale. It should be remembered, however, that the express service to which these rates apply covers the collection and delivery of the package, which involves a considerable part of the total expense.

Freight rates are lower for short distances and somewhat higher for long distances than the 33-cent scale. They are lower for all distances than the 70-cent scale. But the service for which these rates are charged is much less expensive than the transportation of this cream, and rates ordinarily charged for the better service would be materially higher.

In *Milk Producers' Protective Asso. v. D., L. & W. R. R. Co. et al.*, 7 I. C. C. Rep., 92, the Commission established rates on milk and cream for various distances to the west bank of the Hudson River for consumption in the city of New York. The rates fixed in that proceeding upon 10-gallon cans of milk, including a return of the can, were 23 cents for distances up to 40 miles, 26 cents between 40 and 100 miles, 29 cents between 100 and 200 miles, and 32 cents for all greater distances. The rate on cream had been 18 cents per can higher than that upon milk, and this difference was left in effect.

This case can hardly be said to express the judgment of the Commission as to a fair distance tariff upon cream, nor as to the just relation between rates upon milk and cream. The Commission was dealing with a situation in esse. The carriers were applying a

blanket rate of 32 cents per can on milk and 50 cents per can on cream for all distances, which covered in some cases between 300 and 400 miles. Milk producers in the immediate vicinity of Jersey City objected that this blanket rate was a discrimination against them. The Commission so held and removed the discrimination by reducing rates from the nearer points. As established these rates only recognized a difference of 9 cents per can on milk and the same on cream for distances of from 20 up to 400 miles. The relative rate upon milk and cream was not discussed nor much considered. The previous relation was simply continued.

It will be seen that there is no standard by which either the cost of the service or the reasonableness of these rates can be fixed with any certainty. The rates which the carriers themselves have voluntarily established differ in different sections and at different times. There is almost as wide a difference in the rates established by different commissions after mature consideration.

A certain amount of terminal expense attaches to the transportation of these cans of cream, aside from the fair cost of the movement. The full can must be put into and must be taken out of the car, and the same service must be performed upon the return of the empty can. This involves keeping track of the individual cans, so that the cream may reach the proper party and the empty can be returned to its owner. We do not feel that the carriers should be required to handle one of these cans, involving, as it does, a return of the empty, for less than 20 cents, and we shall establish a rate of 20 cents per 10-gallon can for all distances up to and including 25 miles.

Beyond 25 miles we think the rate should increase 1 cent for each 5 miles, up to and including 50 miles. For the next 50 miles it should increase 1 cent for every 10 miles, and 1 cent for every 15 miles thereafter.

This cream is transported in 5 and 8 gallon cans, as well as in 10-gallon cans. Manifestly, transportation in these smaller cans is less economical than in the standard 10-gallon can, since the labor involved in the handling and the space in the car is greater in proportion as the number of pounds contained is less. The effort should be to transport all cream in the larger can. We shall therefore establish rates for 5-gallon cans which are approximately  $\frac{5}{10}$  of the rate charged for the 10-gallon can, and for the 8-gallon can rates which are approximately  $\frac{8}{10}$  of the rates established for 10-gallon cans. In our opinion the following rates would, for the distances named, be reasonable for the carriage of cream in 10, 8, and 5 gallon cans.

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Distance.	Scale for 10-gallon can.	Scale for 8-gallon can.	Scale for 5-gallon can.	Distance.	Scale for 10-gallon can.	Scale for 8-gallon can.	Scale for 5-gallon can.
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
25	20	18	14	285	39	35	27
30	21	19	15	290	40	36	28
35	22	20	15	295	41	37	29
40	23	21	16	300	42	38	29
45	24	22	17	305	43	39	30
50	25	22	17	310	44	40	31
60	26	23	18	325	45	40	31
70	27	24	19	340	46	41	32
80	28	25	20	355	47	42	33
90	29	26	20	370	48	43	34
100	30	27	21	385	49	44	34
115	31	28	22	400	50	45	35
130	32	29	22	415	51	46	36
145	33	30	23	430	52	47	36
160	34	31	24	445	53	48	37
175	35	31	24	460	54	49	38
190	36	32	25	475	55	49	38
205	37	33	26	490	56	50	39
220	38	34	27	505	57	51	40

In numbers 1162 and 1292 the complainants claim reparation. Apparently the rates paid by the Beatrice Creamery Company and the Blue Valley Creamery Company, attacked in 1162, have been higher than those established by our order. The rates attacked in 1292 are all under injunction, and have not, as we understand the matter, been collected. The defendants themselves may have claims for damages under these injunction bonds. This matter of reparation has not been considered in disposing of these cases. If the parties themselves can not agree, the complainants may apply for further proceedings, and the above cases are retained for that purpose.

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No. 1387.  
FAIRMONT CREAMERY COMPANY  
v.  
PACIFIC EXPRESS COMPANY.

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*Submitted December 1, 1908. Decided January 9, 1909.*

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Complainant alleged that defendant declines to issue to it a receipt for empty cans returned free on shipments of cream from various country stations to complainant's creamery at Omaha. This case was heard with that of *Beatrice Creamery Co. v. I. C. R. R. Co.*, *supra*, and as defendant intends to issue such receipts as soon as the new scale of rates on cream is inaugurated, no order is issued.

*Hainer & Smith* for complainant.

*James L. Minnis* for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The defendant express company transports cream from various country stations to the creamery of the complainant at Omaha. The rates under which this cream is handled include a return of the empty can. The complainant alleges that the defendant declines to issue to it a receipt or bill of lading for these empties, and that it thus violates section 20 of the amended act to regulate commerce.

This case was heard with No. 1162—*Beatrice Creamery Co. et al. v. I. C. R. R. Co. et al.*, *supra*. Upon the hearing the representative of the defendant express company stated that when the cream was received at the country station a bill of lading or receipt was issued to the shipper; that originally his company had charged 5 cents per can for the return of the empty can, and that while this charge was in effect receipts had been issued for such empties; that shippers were dissatisfied with this charge and that an arrangement was made in 1890 by which the express company was to make no charge for the return of the empty can and was to be released by the shipper from all liability in respect to such return movement; that in accordance with this agreement no receipts or bills of lading had since been issued for the empties.

The defendant admitted that in the actual transaction of this business such bills of lading ought to be issued or that some method

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ought to be adopted which would accomplish the same purpose, but insisted that the rates were so extremely low that the express company could not afford to do this. It was stated upon the hearing that in establishing these cream rates the Commission would have in mind the fact that the return of these empty cans must involve the issuing of shipping receipts or the adoption of some practice which would accomplish the same purpose.

In fixing the rates in the principal case this fact has been kept in mind. We have fixed a minimum rate which may seem somewhat high, because we have felt that it would be necessary, as the number of shippers increased and the points of destination multiplied, to adopt some method for the identification of both the full and the empty cans, which would be tantamount to a billing and delivery of the cream and a billing and delivery of the empty can. The defendant express company has stated that such bills of lading should be issued, and expects, as we understand its statement, to put in force that practice when the new rates are inaugurated.

The complainant insists that failure upon the part of the defendant to issue a shipping receipt or bill of lading for the empty cans is a violation of section 20 of the act to regulate commerce. This the defendant denies for the reason that the movement of the cream to the creamery and the empty cans back is a part of a single transaction, so that the requirement of the statute is satisfied by the issuing of one bill of lading for the cream. It does not seem necessary to decide this question at this time, since it is conceded that, as a practical matter, receipts should be issued.

Nor does it seem necessary at this time to formulate any order in this case. The method of transporting this cream seems to be different on different lines of railway. In no case, except this, was any dissatisfaction expressed with the system actually in vogue. If we were to lay down some rule for this defendant, shippers might feel that this ought to be followed upon other systems. We prefer, therefore, to allow this express company to initiate such method as appears to it, upon conference with its patrons, to fulfill the requirements of the situation. If the complainant conceives that the method adopted by the defendant is not a just and reasonable one, it may apply to the Commission in this case for further proceedings.

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No. 1512.

D. M. VENUS

v..

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY.

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*Submitted April 29, 1908. Decided January 7, 1909.*

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1. The cause of action herein accrued July 19, 1904, and the claim was first presented in writing to the Commission on June 13, 1907; thereupon defendant was advised by the Commission of the presentation to it of the claim, but a formal petition was not filed until April 4, 1908; *Held*, That the first presentation of this claim, on June 13, 1907, effectually bars the operation of the statute, since this is held to be a sufficient presentation within one year after the passage of the amended law.
2. Complainant is entitled to recover from defendant the sum of \$64, as reparation for an unreasonable charge on specified shipment of sacked shelled oats made under the rates complained of in this case.

*D. M. Venus* for complainant in person.*Martin L. Clardy* and *James C. Jeffery* for defendant.

## REPORT OF THE COMMISSION.

*CLEMENTS, Commissioner:*

On July 7, 1904, complainant shipped a carload of sacked shelled oats, consisting of 32,000 pounds, from Durant, Okla., via the St. Louis & San Francisco Railroad, to Hope, Ark., and thence via defendant's road to Olla, La. No joint through rate was applicable to such shipment and the sum of the local rates was applied, viz: 18 cents per 100 pounds from Durant to Hope and 51 cents per 100 pounds from Hope to Olla. It is alleged that the charge of 51 cents per 100 pounds for the transportation of this shipment from Hope to Olla was unreasonable and unjust; that 31 cents per 100 pounds would have been a reasonable and just charge for such service, and complainant claims reparation in the amount of \$64.

In its answer defendant admits the unreasonableness of the charge in question and avers "that it stands ready and willing at any time to pay over to said complainant the sum of \$64, being the amount of

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reparation demanded by him, and if said claim for reparation is not barred by the statute of limitations, as provided for under the amendment of the act to regulate commerce taking effect August 29, 1906."

Thus the case stands submitted on an agreed statement of facts, and it is only necessary for us to consider the question raised as to the statute of limitations.

The cause of action accrued July 19, 1904, the date of payment of the freight charges as shown by the expense bill issued by defendant and which is filed in the record. The claim was first presented in writing to the Commission on June 13, 1907, and thereupon defendant was advised by the Commission of the presentation to it of the claim, but a formal petition was not filed until April 4, 1908.

Section 16 of the act to regulate commerce provides that "all complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after: \* \* \* *Provided*, That claims accrued prior to the passage of this act may be presented within one year."

It will be noted the act does not specify the manner of presentation of complaints, and, therefore, it is not deemed essential that claims shall be accompanied by a formal petition, as prescribed by the Commission's Rules of Practice, to prevent the operation of the statute of limitations. The first presentation of this claim, therefore, on June 13, 1907, effectually bars the operation of the statute, since this is held to be a sufficient presentation within one year after the passage of the amended law.

It is our conclusion that complainant is entitled to recover from the defendant reparation in the sum of \$64, being the difference between \$163.20, the amount actually collected by defendant as freight charges on the shipment in question, consisting of 32,000 pounds of sacked shelled oats, from Hope, Ark., to Olla, La., and \$99.20, the amount chargeable for such transportation at the rate of 31 cents per 100 pounds, which complainant alleges and defendant concedes is the just and reasonable rate properly chargeable therefor.

Before any refund may lawfully be made it will, of course, be necessary for defendant to publish the rate of 31 cents per 100 pounds to apply on sacked shelled oats in carloads from Hope to Olla.

No order will be entered in this case, since it is understood that defendant stands ready to make reparation in the amount claimed upon a determination by the Commission that it may legally do so. The case will be held open, however, pending receipt of advice by the Commission that adjustment of the rate and of the claim for reparation has been effected in accordance with the views here expressed.



CELINA MILL & ELEVATOR COMPANY  
v.  
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY  
ET AL.

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*Submitted May 26, 1908. Decided January 5, 1909.*

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1. The direct route from the wheat fields on the line of the Frisco in Oklahoma to points on the Cotton Belt in Texas is through their junction at Sherman. The complainant's flour mill at Celina is 28 miles south of Sherman; the haul of its wheat to Celina and of its flour back to Sherman therefore involves an extra service of 56 miles in order to get the benefit of the through milling-in-transit rate applicable via Sherman; *Held*, That the defendants can not be required to perform this back haul free of charge and that the present tariff rates for back hauls and out-of-line service are not unreasonable.
2. If the milling-in-transit rates over a through route from the Oklahoma wheat fields to points where the flour is consumed are made available to one milling point not on such through route, by giving it a back haul or out-of-line service at reasonable rates, no reason is perceived why the same opportunity should not be accorded to another milling point, even though more distant from such through route, at rates that are relatively reasonable.

*J. F. Smith and J. A. L. Wolfe* for complainant.

*U. S. Pawkett* for Dazey-Moore Grain Company et al., interveners.

*E. B. Peirce* for St. Louis & San Francisco Railroad Company, and St. Louis, San Francisco & Texas Railway Company.

*J. A. Kibby* for Texas Central Railroad Company.

*S. H. West and R. F. Britton* for St. Louis Southwestern Railway Company of Texas and St. Louis Southwestern Railway Company.

*Baker, Botts, Parker & Garwood* for Houston & Texas Central Railroad Company.

*James Hagerman and Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

For several years the state of Texas has consumed more wheat than it produces, and has therefore been compelled to draw largely upon the surplus supplies of Kansas, Oklahoma, and Nebraska.

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Much of this grain has been carried into the state by the St. Louis & San Francisco Railroad, which runs southward to a point on the state boundary line called State Line Junction, where it connects with the St. Louis, San Francisco & Texas Railway. These two lines comprise what is commonly known as the Frisco System.

From State Line Junction the Frisco of Texas extends in a southerly direction successively through Denison, Sherman, Celina, and Carrollton to Forth Worth. At Sherman it connects with the Missouri, Kansas & Texas Railway of Texas; the St. Louis Southwestern Railway of Texas, hereinafter for brevity referred to as the Cotton Belt; the Texas & Pacific Railway; the Houston & Texas Central Railroad; and the Gulf, Colorado & Santa Fe Railway. At Carrollton, 55 miles south of Sherman, the Frisco of Texas crosses the tracks of the Cotton Belt and the Missouri, Kansas & Texas. The line then passes to the southwest 28 miles to Forth Worth, where it forms junctions with the Chicago, Rock Island & Gulf Railway; the Missouri, Kansas & Texas; the Houston & Texas Central; the Cotton Belt; and various other lines.

Celina is not a junction point. It is an intermediate local station on the line of the Frisco of Texas, 28 miles south of Sherman and 27 miles north of Carrollton. The complainant is engaged there in the flour-milling business, and desires to ship flour to points on the Cotton Belt. That line, as heretofore stated, joins the Frisco of Texas both at Sherman and at Carrollton, 55 miles south of Sherman. From Sherman the main line of the Cotton Belt extends in a southeasterly direction to Commerce and thence develops into a rather extensive system reaching many points of importance in northeast, east, and southeast Texas. Another branch starting at Fort Worth passes to the northeast through Carrollton and joins the main system at Commerce. The Frisco of Texas, between Sherman at the north and Carrollton at the south, is therefore the base of a triangle which it forms with the lines of the Cotton Belt. The eastern angle of the triangle is at Commerce, where the two branches of the Cotton Belt meet. Celina is situated almost exactly at the center of the base line; and the complainant can reach Commerce, and points beyond on the Cotton Belt, only by sending its flour around through Sherman, at the north angle of the triangle, or through Carrollton, at the south angle. Celina has no direct connection with Commerce and points beyond on the Cotton Belt. The complainant must therefore bring its Oklahoma wheat southward through Sherman 28 miles to Celina and, after grinding it there, must send the flour back over the same rails to Sherman in order to reach the direct route to Cotton Belt points and get the benefit of the milling-in-transit rate applicable to those points through Sherman. This involves an extra transportation service of 56 miles. Celina may also send its flour south 27

miles to Carrollton and, by passing around that angle of the triangle, may reach Commerce and Cotton Belt points beyond. But this involves an extra haul of 69 miles as compared to the haul to the same points from Sherman, which is a comparatively large milling center.

The point in the case is that the complainant demands this extra service free of charge. The movement of its flour through Sherman is a back haul, and through Carrollton an indirect or out of line haul. Sherman, being the most northerly junction of the Frisco of Texas with the Cotton Belt, is the natural interchange point between the two roads. The short line and direct through route for Frisco traffic to Commerce and Cotton Belt points east of Commerce is through Sherman. Through that junction Frisco traffic from Oklahoma may reach Commerce and points beyond by passing over one side of the triangle; in order to reach the same points through Carrollton it must traverse two sides of the triangle. Notwithstanding the extra service that is required to comply with its demands the complainant insists that it is entitled to reach Commerce and points beyond on equal rates with the mills at Sherman. It insists upon a free back haul of its flour to Sherman. It also demands a through route via Carrollton without extra charge. Celina is in the center of what has been a productive wheat district, and the complainant erected its mill there in order to grind the local wheat into flour, which it could do to substantial advantage both in rates and otherwise. Successive crop failures have compelled it, however, to use interstate wheat also; and it now insists upon a rate adjustment that will equalize the disadvantage of its geographical position with the more advantageous position of the mills located at Sherman. It was said in argument and is mentioned in the testimony that the state commission of Texas, on local milling-in-transit movements, requires a free back haul of as much as 208 miles. We are not advised of the conditions under which such obligations are imposed upon local carriers; but assuming, as we must, that the facts justify and the authority vested in that commission warrant such an order, it is clear that there are no such justifying facts here, even if it be taken as unchallenged that we have the power to make an order of that character.

But it was the publication of a charge of 3 cents per 100 pounds for the back haul from Celina to Sherman that was the immediate occasion for this complaint. For some years a charge has been made. For a short time it was  $\frac{1}{10}$  of a cent; it was later raised to  $1\frac{1}{10}$  cents, and more recently to 3 cents per 100 pounds. In its original petition the complainant alleges that the charge was  $\frac{1}{10}$  of a cent when it first started in business at Celina, and it demands the restoration of that rate. In an amended petition this statement is contradicted; it is there alleged that originally it was allowed a free back

haul, and under that petition it now demands a free service. The record is not clear upon the point, but apparently the back hauling was done for a short time free of charge and probably, as it would seem, without tariff authority. But this was done, as explained by a Frisco official, only out of a desire to conform on interstate traffic with the requirements of the state commission in respect to back hauls on local traffic. After a brief period of free service the charge of  $\frac{1}{10}$  of a cent was properly enforced.

Shortly after the original petition was filed, complaining of the 3-cent rate then in force and demanding the restoration of the previous rate of  $\frac{1}{10}$  of a cent, the charge was reduced to 2 cents and so remains. The tariff provision is 1 cent for 50 miles and under, 2 cents for over 50 and under 75 miles, 3 cents for 75 and under 100 miles, etc. As the haul from Celina to Sherman and return involves an extra service of 56 miles the charge against the complainant under that schedule is 2 cents.

That charge can not fairly be regarded as excessive. If the haul of the wheat through Sherman to Celina, the milling privilege at that point, and the haul of the flour from Celina back to Sherman, are to be regarded, as they must be, as having any relation to the through movement, we see no reason why the back-haul service, with the milling-in-transit privilege, should be performed at any lower rate per ton per mile than the through movement itself. At 2 cents per 100 pounds the rate per ton per mile for the 56 miles is slightly in excess of 7 mills. The through milling-in-transit rate from Columbus, Kans., for example, to Lufkin, Tex., and this haul, 857 miles, is about as long a haul as the traffic could ordinarily take in this territory, is  $34\frac{1}{2}$  cents per 100 pounds, or about 8 mills per ton per mile. The rate per ton per mile for the average haul would of course be still higher. In other words, the rate for the back haul, by which the complainant is able to avail itself of the milling-in-transit privilege and to have the benefit of the through rate, is even now lower per ton per mile than the rate for the through movement. The complainant earnestly contends that it is entitled to the extra service free of charge, but although it has had our most careful consideration we have not been able to take that view of the matter. The defendants, of course, may voluntarily publish a free back haul or a merely nominal rate for the extra service, and neither course would necessarily meet with objection from this Commission if no discrimination were involved. But we see no clear ground upon which we can require the defendants to perform a back haul or out-of-line service free of charge or for less than a reasonable charge; nor has any ground been suggested by the complainant. The interveners from Fort Worth do not deny the right of the carriers to charge reasonable rates for a back haul,

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and for an indirect or out-of-line service; and upon the whole record we think the present charges for such services are not unreasonable.

From statements made during the course of the argument the Commission was left under the impression that the through routes, formerly available to the complainant but which were withdrawn after this complaint was filed because of some disagreement between the connecting lines as to the division of the through rates, would at once be restored without waiting for action by the Commission. And in the foregoing pages we have discussed the questions involved as if they had been restored. It seems, however, that this has not in fact been done. It is the desire of the Commission that the through routes from points in the wheat-producing fields in question via the Frisco system and the Cotton Belt through their junction at Sherman shall be promptly reestablished. We see no reason why through routes should not be established also from the same points of origin over the Frisco system to points on the Missouri, Kansas & Texas Railway of Texas, through the junction of those two lines at Sherman or Denison, and those lines are expected promptly to take the necessary steps to that end. Nor do we see any reason why the complainant should not be given through routes over the Frisco system and the Cotton Belt through Carrollton to points on the line of the Cotton Belt west of Commerce, to which the mileage via Carrollton is not greater than the mileage via Sherman. As to the establishment of these routes no order seems necessary in view of the assurances given by counsel on the argument; we assume that the carriers will act without delay. In case they are unable to agree upon the divisions of the through rates, the Commission will receive suggestions or take testimony as may be desired, and will then enter an appropriate order; but the reestablishment of the through routes referred to ought not to be delayed by any disagreement among the carriers with respect to divisions.

As the rates applicable to such through routes when reestablished are controlled in principle by the ruling of the Commission in *Farmers', Merchants' and Shippers' Club of Kans. v. A., T. & S. F. Ry. Co.*, 12 I. C. C. Rep., 351, no order in relation to rates will be necessary in disposing of this proceeding. It may be well here to add that in making this disposition of the complaint we are acting only upon the particular record before us and are not to be understood as having under consideration the question of the general propriety of milling-in-transit privileges.

On the argument something was said about free back hauls or out-of-line service allowed by the Frisco system to mills at Enid, Ardmore, and other points on its lines. It was said that the performance of a free service at those points was inconsistent with the attitude

of that company with respect to back hauls for mills on its line in Texas. The explanation made is that those points used to be on the direct through line, but, because of a straightening out of the line or change in its location, are now off the main line, and on that account are allowed a free back haul to the new main line. But the facts were not brought out clearly on the record, and we are not able therefore to determine whether the free service at those points amounts to a discrimination against other milling points on that defendant's lines at which the free service is denied. Whether it is in fact a discrimination ought not to be a matter of doubt to that defendant with full knowledge of all the circumstances. If it is a discrimination the free back haul ought immediately to be discontinued there or be made effective in favor of other milling points on that line against which its existence there may operate as a discrimination. We shall listen to further testimony on the point, if so requested by the complainant, and shall then take such action as may seem proper.

The milling interests of Fort Worth, who have intervened herein, raise some questions that are not pertinent to the issue presented by the complaint and which can best be brought forward under a new petition. The record in fact is so meager in that respect as not to afford a sufficient basis for an order. They also ask for an extension of through routes via Fort Worth, with the milling-in-transit privilege at that point, so that their flour may reach destinations on the line of the Cotton Belt and on the lines of other defendant carriers. If we correctly understand the object they seek to attain, it is to secure a rate adjustment that will enable them to compete with their flour at points north, northeast, and east of Fort Worth, to which the more northern mills have access by shorter and more direct routes. In other words they desire an extension of the back haul and out-of-line service by the carriers. Speaking as of the date when the complaint was filed, Fort Worth flour, ground from wheat that comes in either over the Rock Island or the Frisco, may reach practically the whole of Texas on through milling-in-transit rates from the Oklahoma wheat fields. Flour-consuming points on the Cotton Belt are about the only stations not open to Fort Worth mills. We see no reason why they should not have access to those points also. No grounds have been suggested upon which we can justify a back haul, on reasonable rates for the extra service from Celina to Sherman and at the same time deny to Fort Worth a back haul to Sherman on rates that are relatively reasonable. The defendants suggest no theory upon which we can draw a line at a particular point and say that the back haul or out-of-line service must not extend beyond. And so if an out-of-line service to Cotton Belt points is open to any milling point on the lines of the defendants, why should not a

similar out-of-line service on relatively reasonable charges be open to the Fort Worth millers? The situation is not fully before us on this record; the intervening petition states the principle desired by Fort Worth millers, but gives us no details upon which we may safely apply the principle to the many particular destinations which they wish to reach.

Presumably the general basis upon which the defendants have established through routes with the milling-in-transit privilege from the wheat-producing district of Oklahoma to the destinations in question is by using the junction that makes the shortest reasonable route to the particular destination. If they make the milling-in-transit rate available to any point off such a direct through route, by giving it a back haul or out-of-line service, we see no reason why the defendants should not do as much for the Fort Worth mills on rates for the extra service that bear a proper relation to the rates accorded to the millers at such other point; nor do we see any reason why through routes with milling-in-transit rates should not be established through Fort Worth to particular destinations when that junction makes the shortest reasonable route to such destinations. But, as we have said, the record does not present the complaint of Fort Worth in detail, and as it is our understanding that its millers intend to file a complaint against another system covering this general question, we shall content ourselves with this merely tentative statement of the impression made upon us by the record without endeavoring to enter any order at this time, thus leaving the whole matter open for future consideration, so far as Fort Worth is concerned, either upon further suggestions in connection with this complaint or upon any new complaint that may be filed in behalf of Fort Worth millers.

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No. 1165.

PARLIN & ORENDORFF COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY.

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*Submitted October 29, 1908. Decided November 14, 1908.*

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On complaint challenging the reasonableness of the class rate of 73 cents per 100 pounds on a mixed carload of buggies and wagons from East St. Louis, Ill., to Beebe, Ark.; *Held*, That the rate was excessive and ought not to have exceeded the commodity rate of 39 cents per 100 pounds presently to be established by the defendant. On that basis reparation is awarded with interest at 6 per cent.

*Henry A. Beckers* for complainant.

*James C. Jeffery, Martin L. Clardy, B. M. Flippin, and Henry G. Herbel* for defendant.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

In December, 1903, the complainant shipped from East St. Louis, Ill., a mixed carload of buggies and wagons, upon which, there being no commodity rate then in effect, freight charges were collected on the basis of the second class rate of 73 cents per 100 pounds. The petition questions the reasonableness of this rate, and reparation is demanded in the sum of \$79.80, that being the difference between the freight charges actually assessed on the shipment and the amount that would have been charged under a commodity rate of 30 cents that had been in effect for two years, and until a few days prior to the date of the shipment, and was reestablished soon thereafter. The complaint was filed with the Commission on June 28, 1907, within one year after the passage of the amended act to regulate commerce.

The tariff in effect shortly prior to the date of the complainant's shipment fixed rates on—

agricultural implements, including hand implements, plow points and blades, and other parts of agricultural implements, rough or finished; buggies, vehicles, and wagons (farm), or parts of same, rough or finished; road scrapers, straight or mixed carloads, or when mixed with wheelbarrows or binder twine, minimum weight, 20,000 pounds.

According to its terms, and as interpreted by the defendant in actual practice, this grouping of various articles, including "buggies, vehicles, and wagons (farm)," under the general head of agricultural implements, permitted the mixed shipments of buggies and wagons on the



commodity rate fixed in the tariff. And this rate from East St. Louis to Beebe, as heretofore stated, was 30 cents per 100 pounds. On the theory that vehicles and buggies are freight of a higher class and properly justify higher earnings than the carriers can make on agricultural implements, vehicles were subsequently eliminated from that tariff by an amendment that took effect a few days before the complainant's shipment moved. The result was that on the date of the movement the second class rate of 73 cents per 100 pounds was the only rate that could lawfully be assessed against the complainant. But within sixty days thereafter this adjustment was again modified by an amendment restoring the mixed carload rate of 30 cents per 100 pounds on freight and passenger vehicles. And except for a period of less than thirty days during the year 1905 this rate remained in effect until June 1, 1907, since which time the only rate applicable on mixed shipments of this character has been 73 cents per 100 pounds, being the second class rate between the points in question under the Western Classification. This rate is still in effect; but at the hearing the freight traffic manager of the defendant stated that it was the purpose of the defendant to put into effect at an early date a rate of 39 cents per 100 pounds on a mixed carload of freight and passenger vehicles.

Beyond a brief statement of the history of the rate in question, substantially as here outlined, the complainant offered no proof in support of its contention that the 73-cent rate was excessive, nor did the defendant admit that rate to have been unreasonable. It expressed its willingness, however, to make reparation to the complainant on the basis of the 39-cent rate presently to become effective. Without receding from its position that vehicles ought to take a higher rate than agricultural implements, the freight-traffic manager of the defendant explained that the 39-cent rate was to be established only because the state railroad commission of Arkansas had required carriers on intrastate movements to accord to vehicles the rate fixed on shipments of agricultural implements, and to avoid discrimination against its interstate shippers the defendant had concluded to establish the same relation of rates on interstate traffic in vehicles and implements.

Under all the facts appearing of record we find that the class rate of 73 cents was unreasonable and excessive, and that the rate on a mixed carload shipment of freight and passenger vehicles from East St. Louis to Beebe ought not to have exceeded the rate of 39 cents per 100 pounds. We also find that the complainant is entitled to reparation in the sum of \$67.81, being the difference between the rate actually collected on the shipment, which weighed 19,700 pounds, and the rate here fixed. Upon this amount the defendant will also be required to pay interest at the rate of 6 per cent per annum from the date the charges were collected.

An order will be entered accordingly.

No. 1205.

S. R. WASHER GRAIN COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY.

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*Submitted June 27, 1908. Decided January 6, 1909.*

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Complaint alleged unjust discrimination arising from the practice of defendant of allowing free commercial elevation at certain places and refusing the same, or a money compensation therefor, at Atchison. Based on this allegation indirect damages to a large amount were claimed as well as an attorney's fee. The evidence was that the complainant actually elevated a certain amount of grain, moving in interstate commerce over the defendant's lines. The Commission has condemned commercial elevation as practiced by the carriers, or money compensation therefor, *Peavey case*, 14 I. C. C. Rep., 315; at the time of the alleged discrimination, however,  $\frac{1}{4}$  of a cent per 100 pounds was considered a proper allowance in lieu of such elevation. Upon consideration of all the facts, *Held*:

1. The Commission has jurisdiction, without regard to the amount in controversy, to award damages whenever they arise under the act, excepting in those cases where the act itself names another forum.
2. While the *Abilene case*, 204 U. S., 428, settles the primary jurisdiction of this Commission to determine the reasonableness or unreasonableness of an established rate and to award reparation predicated upon the unreasonableness of an established rate, the Commission's jurisdiction is primary also in matters of unjust discrimination, undue or unreasonable preference or advantage, undue or unreasonable prejudice or disadvantage, and, generally, whenever the Commission may order the carrier to cease and desist from violations of the act.
3. The Commission, in passing upon the reasonableness or unreasonableness of a rate, acts as an administrative body having quasi judicial functions; when it determines what the rate should have been and shall be in the future it exercises certain legislative functions; when it computes the damages or reparation due the shipper by reason of the enforcement and collection of a rate unreasonable to the extent that it exceeds a rate which is declared to be reasonable, there is a mere mathematical determination of the damages the shipper should receive. Reparation or damages, therefore, in all matters which concern rates are reduced, after the Commission has determined what the reasonable rate should have been, to the simplicity of a mathematical calculation; elements of conjecture, speculation, and inference are entirely eliminated. In matters of discrimination, however, of undue preference, prejudice, or disadvantage, a different field is entered, where the services of a jury may be necessary, not only by reason of the seventh amendment to the Constitution, but by the 15 I. C. C. Rep.

very nature of the subject-matter itself. It may be proper, and the Commission has so considered in many instances, to award money damages in cases of the kind just described, and such awards have been complied with by the carriers, but the proofs to support such awards should be very clear and exact; they should be free from surmise and conjecture.

4. Reparation, based upon the amount of grain actually elevated, allowed in this case because it is found that the free commercial elevation afforded shippers elsewhere discriminated against Atchison and affected the rates paid by the complainant to the exact extent of  $\frac{1}{4}$  of a cent per 100 pounds.
5. The Commission does not assess costs; nor does it allow attorney's fees; nor does its order for the payment of money have the effect of an order, decree, or judgment of a court; nor are such orders enforceable by process; nor do they become liens upon the property of a defendant.

*Frank Doster* for complainant.

*James C. Jeffery, Martin L. Clardy, and Henry G. Herbel* for defendant.

#### REPORT OF THE COMMISSION.

*COCKRELL, Commissioner:*

The complaint in this case was filed August 6, 1907. The complainant alleges that it is incorporated; that it buys grain in Kansas and Nebraska and sells the same in various other states of the Union; that it owns and operates a terminal grain elevator located on ground owned by the defendant and contiguous to said carrier's lines in Atchison, Kans.; that the value of its elevator is about \$30,000; that the defendant owns terminal grain elevators at Coffeyville and Leavenworth, Kans., and at Kansas City, Mo., which had been leased to certain other grain dealers, but since about July, 1906, have been operated by the defendant free of charge to all persons using the same; that the free service performed by the defendant at these Coffeyville, Leavenworth, and Kansas City elevators consisted not only of transferring grain from one car to another, but also of cleaning, mixing, and clipping the same; that protest was made by complainant against the injustice to it of furnishing such free services at the places named in view of the refusal of defendant to put the complainant on an equal footing by furnishing the same free services or by making a money compensation therefor; and that this discrimination against complainant and the city of Atchison continued until July 15, 1907, when comparative equality between the places named and Atchison, and between all persons using the defendant's elevators and this complainant, was restored by a rule of the defendant putting in force an elevation allowance of  $\frac{1}{4}$  of a cent per 100 pounds, which rule was in compliance with an order of this Commission that discrimination in the matter of elevation should cease.

The complainant further alleges that by reason of the discrimination and practices above set forth it was unable successfully to compete in the grain markets with dealers enjoying free elevation of

grain, in the commercial as well as in the transportation sense of that term; that the business of complainant was almost totally destroyed; that its elevator plant was idle most of the time, and was practically a worthless investment; and that the prestige of the complainant and that of its chief stockholders were permanently damaged.

These matters, as alleged, are set forth in the terms of the act as unjust, undue, and unreasonable, and violation of the act is specifically charged, particularly sections 1, 2, and 3.

The prayers are as follows:

Therefore for the above-mentioned reasons, and by reason of such other facts as may become apparent upon hearing, complainant prays to be awarded damages in the aggregate sum of \$54,410, as itemized below:

Interest and depreciation elevator plant.....	\$4, 800
Insurance .....	720
Operating expenses of plant, July, 1905, to July, 1906.....	10, 000
Salary president and secretary.....	3, 000
Loss of business, based on amount of grain handled during period of discrimination as compared with previous corresponding period.....	10, 890
Damages account of loss of prestige and good will to a business well established for thirty years.....	25, 000
<b>Total.....</b>	<b>54, 410</b>

In addition to above sums complainants ask that they be allowed a reasonable attorney's fee, all as provided in section 8 of the act to regulate commerce as amended.

There are other prayers which need not here be stated further than to summarize them as insinuating, without distinct allegation, that certain officials of the defendant carrier owned stock or were otherwise personally interested in competing grain companies and elevators, and as asking again the damage itemized above, a reasonable attorney's fee, the imposition of costs in this case upon the defendant, and for general relief.

The answer of the defendant was merely a technical denial of the complaint, such as to put the complainant to its proofs of the matters alleged.

The case was very fully and carefully heard, elaborate briefs were submitted, and oral argument was had before the Commission at Washington. During the course of the argument the question of jurisdiction was raised by the Commission itself, although the defendant had not up to that time called attention to the matter. Thereupon additional briefs were filed dealing solely with that question.

The facts in this case are as follows: The complainant's business is nearly all interstate, only about 5 per cent of it being confined to Kansas. Comparing the year embraced in the complaint with the average of the four years preceding, the complainant's interstate business did decline from 1,208 cars per annum over defendant's lines,

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and 109 over all other lines, to 469 cars over defendant's lines and 42 cars over all other lines. Up to the beginning of the year embraced in the complaint—July, 1906, to July, 1907—an elevator allowance had been made by defendant to complainant of  $1\frac{1}{4}$  cents per 100 pounds; but this allowance was withdrawn during that period, and free elevation, not furnished at Atchison, was furnished by defendant to all shippers at Kansas City, Mo., Leavenworth and Coffeyville, Kans. Atchison is 21 miles from Leavenworth and 47 miles from Kansas City; Coffeyville is in the extreme southern part of Kansas.

During the year embraced in the complaint, competition in Atchison arose between certain other grain dealers and complainant; during this period complainant bid for grain only occasionally, and then rather under the market price in the country—from  $\frac{1}{8}$  to  $1\frac{1}{4}$  cents per bushel less than other buyers. The same conditions held in the selling market; the complainant was underoffered on sales as it was overbid on purchases. The complainant stands well in the trade and its reputation, "prestige, and good will" are as high to-day as ever. The officers and real owners of the complainant corporation were directly concerned with the case brought in the name of the *City Council of Atchison, Kans.*, v. *M. P. Ry. Co. et al.*, 12 I. C. C. Rep., 111, 254; one of them testified in that case, another wrote letters to the Commission concerning it, and the same counsel represented the complainant in that case that represents the complainant in this case. The facts stated in the complaint were substantially proved; the inferences, deductions, and technical allegations connected therewith, as well as the amounts of damages claimed as suffered by the complainant, were either not proved, proved only in part, or abandoned, as hereinafter pointed out.

In this case it is not necessary to consider what is meant by the word "elevation" as used in the act, as we have recently decided that in the *Peavey case*, 14 I. C. C. Rep., 315.

The whole trouble with the subject of "elevation" is that while it is one word it means at least two separate and distinct things; things, however, which in practice have frequently, if not generally, been combined. Elevation as an element of transportation is defined in the second *Peavey report*, 12 I. C. C. Rep., 85, as "the unloading of grain from cars, or from grain-carrying vessels, into a grain elevator and loading it out again after storage for a period of not to exceed ten days." Elevation from the commercial side involves the storage of grain, both to preserve it and to await the market, as well as cleaning, mixing, clipping, and other treatment, or adulteration. The two "elevations" have usually been combined and the person, firm, or corporation operating the elevator has been usually also a

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buyer, storer, mixer, cleaner, clipper, adulterator, seller, and shipper of grain. The result in almost every case has been that the grain dealer operating an elevator has had an advantage over his competitors not only in the commercial use of his elevator, but in the rates, rules, and regulations of the carriers in that he has had rebates, allowances, and discriminations in his favor in the matter of transportation.

Counsel for the defendant stated at the close of the argument:

The great trouble is in the assertion, of the right of the shippers to mix grain while it is going through these elevators. They insist upon it. You abolish that and you have furnished a solution of this whole trouble, because then we will be simply treating it as a transportation proposition.

The last report in the *Peavey case*, 14 I. C. C. Rep., 315, with the specific name of the railroad stricken out and the words "Peavey & Company" changed to the words, "The elevator company," has these terms:

The mixing of grain is said to be one of the largest sources of profit to a grain dealer. By mixing a carload of inferior grain with a carload of grain of higher grade the aggregate value of the 2 carloads is increased and the dealer's profits from the sale are larger than they would be if the 2 carloads were sold separately. The storage of grain beyond the elevation period of ten days is also of commercial value to grain dealers. The "treatment" of grain is of advantage to them in that it results in enhancing its value. Weighing and inspection are also of advantage to the owner of the grain. \* \* \* Such services are commercial services and are in no sense a part of elevation as defined in the act to regulate commerce. If, therefore, the railroad company pays to the elevator company an allowance of  $\frac{1}{2}$  of 1 cent, or of any other amount however small, on grain belonging to them which has been mixed, treated, stored, weighed, or inspected in their elevators, it amounts *pro tanto*, to a contribution by the railroad company to the elevator company of the cost of securing these commercial results and benefits. The allowance therefore not only results in an undue preference when paid on grain belonging to the owner of an elevator thus under contract, but, in effect, is also an unlawful rebate, unless confined to grain that is reshipped within the elevation period of ten days and has not been mixed, treated, weighed, or inspected.

Hereafter wherever elevation in the transportation sense of the term is afforded by the railroads it must be without any commercial advantages to the shipper either in the way of mixing, grading, cleaning, clipping, or of storage beyond the period of ten days.

The matters brought to our attention in this case demand an investigation of our jurisdiction to award damages—what it is and when it should be exercised. Recognizing that ultimately the courts must determine this question, we are unable to avoid an administrative consideration of the subject.

Section 8 of the act is as follows:

That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this 15 I. C. C. Rep.

act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

It is probably unnecessary to do more than to point out that by the terms of section 8 the damages therein contemplated and the attorney's fee provided for can only be recovered in a suit brought in a court for a violation of the interstate commerce act and the amendments thereto.

Section 9 provides:

That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The Supreme Court in the *Abilene case*, *infra*, has construed the ninth section, and we can not do better than quote the words of the court:

In other words, we think that it inevitably follows from the context of the act that the independent right of an individual originally to maintain actions in courts to obtain pecuniary redress for violations of the act conferred by the ninth section must be confined to redress of such wrongs as can consistently with the context of the act be redressed by courts without previous action by the Commission, and therefore does not imply the power in a court to primarily hear complaints concerning wrongs of the character of the one here complained of.

Section 10 makes certain acts of the common carrier, its officers or agents, misdemeanors and provides certain penalties therefor, and makes certain analogous acts on the part of shippers misdemeanors, likewise punishable by similar penalties, and adds in its last clause—and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Clearly under section 10 the Commission, as an administrative body having quasi judicial powers, has no authority whatever, as the section is directed solely to court procedure.

The thirteenth section, which relates specifically to proceedings before the Commission, has these words:

If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. \* \* \*

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

The obvious meaning of these latter words is that the Congress, as shown elsewhere throughout the act, desired to divorce proceedings before the Commission from technicalities that arise very properly in the courts, and to allow complaints to be filed even where there is no direct damage to the complainant in order that the Commission might investigate, and that the public generally might, without burdensome technical restrictions, get the full value of the Commission's rulings on matters that perhaps to the individual are infinitesimal and indirect, but which are of momentous importance to the public at large.

Section 14 says in regard to the reports made by the Commission:

In case damages are awarded such report shall include the findings of fact on which the award was made.

Section 15 has these words:

All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, etc.

Clearly by these sections 14 and 15 awards of money damages made by the Commission are contemplated.

Section 16, so far as damages are concerned, is as follows:

That if, after hearing on a complaint made as provided in section 13 of this act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant \* \* \* may file in the circuit court of the United States \* \* \* a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed

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and collected as a part of the costs of the suit \* \* \*. In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants \* \* \*. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

The sections quoted above are all that bear directly upon the question of the jurisdiction of this Commission to award money damages in any case.

The Cullom Act, approved February 4, 1887, was interpreted as giving no authority to this Commission to award damages. In the first annual report of the Commission, dated December 1, 1887, on page 27, the Commission said :

In none of the cases so far decided by the Commission has it felt called upon to order reparation to be made for past injury. Most of the cases were such as to present no case for reparation—they looked only to the establishment of a rule for the future. Some complaints, however, were evidently made in the expectation that the Commission might proceed to give damages upon a grievance that would support an action on the common-law side of the federal court. The Commission, when such complaints have been brought to a hearing, has not discovered in the statute a purpose to confer upon it the general power to award damages in the cases of which it may take cognizance. The failure to provide in terms for a judgment and execution is strong negative testimony against such a purpose; but what is perhaps more conclusive is that the act must be so construed as to harmonize with the seventh amendment to the Federal Constitution, which preserves the right of trial by jury in common law suits.

It is believed to be unquestionable that parties can not be deprived of this right through conferring authority to award reparation upon a tribunal that sits without a jury as assistant; and that therefore any determination that reparation should be made, in a case in which a suit at law might have been maintained, can not be made absolutely binding and enforceable against the defendant in the form of a judgment; but that under the statute it will put the defendant to election, either to satisfy the complaint, in which case he will be relieved from further liability or penalty, or, on the other hand, to take the risks of proceedings in a federal court to recover damages or penalty, or both, in which case the finding of the Commission would be *prima facie* evidence of the facts recited in it.

Thereupon an amendment was presented to the Congress, which was passed and approved March 2, 1889, and the act was further amended June 29, 1906. By these amendments, particularly the amendments to section 16 of the act, the Commission now has authority to award money damages in certain classes of claims, and its orders for reparation, if resisted by the carriers, may now be reviewed before a jury in the courts of common law.

At no time have costs been assessed by the Commission; at no time have attorneys' fees been allowed to the successful party; at no time

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has any order or rule of the Commission for the payment of money had the effect of an order, decree, or judgment of a court; at no time has an order of this Commission for the payment of money been enforceable by process or been regarded as a lien upon the property of a defendant. The Commission is solely a creation of the act and the act has not given any such power or efficacy to its procedure or orders. The complainant in asking for attorney's fees and that the defendant be mulcted in costs has requested what the Commission has no power to grant. Indeed, there are indications not only in the prayers but throughout the case that through misapprehension of the forum contemplated in section 8 of the act this case was, in part, improperly brought before the Commission.

Under the act to regulate commerce as amended, particularly under the sixteenth section, providing for a trial *de novo* before a court and jury whenever carriers refuse to obey an order of the Commission for the payment of money, and making at such trial the findings and order of the Commission prima facie evidence of the facts therein stated, we are of the opinion that the Commission has jurisdiction, without regard to the amount in controversy, to award damages whenever they arise under the act, excepting in those cases where the act itself names another forum.

While the Commission, in our opinion, has power or jurisdiction to award damages without regard to whether such damages exceed \$20 or not, the defendant's constitutional right to a trial by jury being preserved, the Commission has no jurisdiction or power to award damages at all unless such damages shall have arisen strictly as pointed out in the act. Nor does the jurisdiction or power of the Commission to award damages extend to or embrace all damages pointed out in the act, for by the act itself certain damages, after the criminal jurisdiction of the courts has been invoked, can only be recovered in an action on the case in a court of the United States of competent jurisdiction (sec. 10 of the act, *supra*).

The leading case on the jurisdiction of this Commission to award damages is *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, decided February 25, 1907, by the Supreme Court of the United States, 204 U. S., 426. In that case the court held—

That the act to regulate commerce was intended to afford an effective means for redressing the wrongs resulting from unjust discrimination and undue preference is undoubted. \* \* \* And it is apparent that the means by which these great purposes were to be accomplished was the placing upon all carriers the positive duty to establish schedules of reasonable rates which should have a uniform application to all and which should not be departed from so long as the established schedule remained unaltered in the manner provided by law \* \* \*.

When the general scope of the act is enlightened by the considerations just stated it becomes manifest that there is not only a relation, but an indissoluble

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unity between the provision for the establishment and maintenance of rates until corrected in accordance with the statute and the prohibitions against preferences and discrimination. \* \* \*

Indeed, no reason can be perceived for the enactment of the provision endowing the administrative tribunal, which the act created, with power, on due proof, not only to award reparation to a particular shipper, but to command the carrier to desist from violation of the act in the future, thus compelling the alteration of the old or the filing of a new schedule, conformably to the action of the Commission, if the power was left in courts to grant relief on complaint of any shipper, upon the theory that the established rate could be disregarded and be treated as unreasonable, without reference to previous action by the Commission in the premises. This must be because if the power existed in both courts and the Commission to originally hear complaints on this subject, there might be a divergence between the action of the Commission and the decision of a court. In other words, the established schedule might be found reasonable by the Commission in the first instance and unreasonable by a court acting originally, and thus a conflict would arise which would render the enforcement of the act impossible \* \* \*.

A shipper seeking reparation predicated upon the unreasonableness of the established rate must, under the act to regulate commerce, primarily invoke redress through the Interstate Commerce Commission, which body alone is vested with power originally to entertain proceedings for the alteration of an established schedule, because the rates fixed therein are unreasonable.

While the Abilene case settles the primary jurisdiction of this Commission to determine the reasonableness or unreasonableness of an established rate and to award reparation predicated upon the unreasonableness of an established rate, we believe that our jurisdiction is also primary in matters of unjust discrimination, undue or unreasonable preference or advantage, undue or unreasonable prejudice or disadvantage, and generally whenever the Commission may order the carrier to cease and desist from violations of the act. As we said in the case of the *Railroad Commission of Ohio et al. v. H. V. Ry. Co.*, 12 I. C. C. Rep., 398:

Every reason advanced by the Supreme Court in support of the conclusion that the lower court had not original jurisdiction in rate matters appears to apply with equal force to our view that this Commission has original jurisdiction of questions of discriminatory practices prohibited by the act to regulate commerce.

Many matters that appear to involve discrimination only do affect and involve the rates and charges paid by the shipper.

If, therefore, this Commission has jurisdiction primarily to consider the questions of unjust discrimination, undue or unreasonable preference or advantages to persons, localities, or particular descriptions of traffic, etc., it would seem also to have jurisdiction to award reparation or damages in connection therewith when properly proved.

The Commission, in passing upon the reasonableness or unreasonableness of a rate, acts as an administrative body having quasi judicial functions; when it determines what the rate should have been

and shall be in the future, it exercises certain legislative functions; when it computes the damages or reparation due the shipper by reason of the enforcement and collection of a rate unreasonable to the extent that it exceeds a rate which is declared to be reasonable, there is a mere mathematical determination of the damages the shipper should receive. Reparation or damages, therefore, in all matters which concern rates are reduced, after the Commission has determined what the reasonable rate should have been, to the simplicity of a mathematical calculation; elements of conjecture, speculation, and inference are entirely eliminated. When we come, however, to matters of discrimination, of undue preference, prejudice, or disadvantage, we enter a different field, where the services of a jury may be necessary, not only by reason of the seventh amendment to the Constitution, but by the very nature of the subject-matter itself. It may be proper, and the Commission has so considered in many instances, to award money damages in cases of the kind just described, and such awards have been complied with by the carriers; but the proofs to support such awards should be very clear and exact; they should be free from surmise and conjecture.

Examining the elements of damage as enumerated by the complainant in this case, and bearing in mind the fact that the Commission, in *City Council of Atchison v. M. P. Ry. Co. et al.*, 12 I. C. C. Rep., 111, had decided prior to the filing of the present case that the particular practices herein alleged discriminated against the business enterprises located at Atchison, Kans., we fail to see how this Commission could award damages in this case for—

Interest and depreciation elevator plant.....	\$4, 800
Insurance .....	720
Salary president and secretary.....	3, 000
Damages account loss of prestige and good will to a business well established for thirty years.....	25, 000

Clearly the testimony to support such elements of damage is testimony that should only be received before a court and jury, with the restrictions obtaining in courts of common law. A court of equity would send such issues to a jury for determination, and so far as these elements are concerned they should not have been submitted to this Commission.

The other elements of damage claimed are—

Operating expenses of plant July, 1905, to July, 1906.....	\$10, 000
Loss of business, based on amount of grain handled during period of discrimination as compared with previous corresponding period.....	10, 890

Obviously the claim for operating expenses set forth above is not within the jurisdiction of this Commission. With respect to the loss of business based on the amount of grain handled during the period

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of discrimination as compared with a previous corresponding period, this Commission before taking jurisdiction would have to find that such loss was due entirely to the discrimination alleged and occurred without the contributory fault of complainant. The fact was made plain in the evidence, however, that the complainant bid only occasionally for grain, and then at less than the bids of his competitors. The *Parsons case*, 167 U. S., 460, disposes of this element of damage. Paraphrasing that case, the evidence shows that the complainant did not elevate, and yet seeks to recover the extra sum it might have been entitled to if it had elevated. "Penalties are not recoverable on mere possibilities."

It is noticeable in this connection that some of the elements of damage alleged in the complaint were abandoned during the course of the hearing, and that the conduct of the case makes plain the fact that while the complainant believed itself injured by the action of the defendant, and desired damages, the foundations of those damages were at no time fixed, but shifted from place to place as the case proceeded.

Although we are unable, for the reasons stated, to award damages or reparation under any one of the specific claims set forth in the complaint, we think the complainant is entitled to reparation under its prayer for general relief upon facts which became apparent upon the hearing. It is true that the carrier may lawfully erect, maintain, own, and use elevators located at any point convenient to itself for the sole purpose of elevating grain for transportation purposes; that is, for the release of equipment and the consolidation of loads, and may lawfully refuse to make such transfers at other places not convenient to itself; but whenever in so operating its elevators it has added to such transportation elevation the elements of commercial elevation—that is, grading, mixing, cleaning, smutting, etc.—at one locality, and has refused the like commercial elevation at another locality, it has been guilty of discrimination, and in this particular case such discrimination was unjust.

The complainant shipped and elevated, in interstate commerce, over the lines of the defendant, during the period of discrimination, 469 cars of grain, weighing in the aggregate 32,000,000 pounds. The reports and orders of this Commission with respect to that period regarded  $\frac{3}{4}$  of a cent per 100 pounds as a proper allowance for such elevation. *City Council of Atchison v. M. P. Ry. Co. et al.*, 12 I. C. C. Rep., 111, 254. This allowance should have been made to the complainant and \$2,400 paid to it in liquidation thereof by the defendant. The proofs are, however, that only \$618.27 was actually paid thereon and we therefore find that reparation should be made by

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the defendant to the complainant in the sum of \$1,781.73, with interest at 6 per cent per annum from August 6, 1907, until paid.

We allow reparation in this case notwithstanding the fact that we have recently disapproved of all elevator allowances in the last report of the *Peavey case*, 14 I. C. C. Rep., 815, and for the following reasons: Elevator allowances were paid under the authority, order, and sanction of this Commission during the period in question; the discriminatory practices of the defendant in favor of Kansas City, Mo., and Leavenworth and Coffeyville, Kans., whereby the complainant was subjected to undue prejudice and disadvantage to the extent of  $\frac{3}{4}$  of a cent per 100 pounds with regard to all grain elevated by it at Atchison and shipped over the lines of the defendant in interstate commerce, affected the rates paid by the complainant to the exact extent of  $\frac{3}{4}$  of a cent per 100 pounds; and the measure of the damage done by this unjust discrimination was ascertained in the Atchison case, *supra*. The Abilene case decides that the power of the Commission extends to hearing legal complaints of and awarding reparation to individuals for wrongs unlawfully suffered from the application of an unreasonable schedule during the period when such schedule was in force, and the practice, rule, and regulation forming the gravamen of this complaint was unreasonable in so far as it afforded free commercial treatment of grain at Kansas City and other places, and refused the same free commercial treatment or a money allowance of  $\frac{3}{4}$  of a cent per 100 pounds therefor at the complainant's elevator at Atchison.

An order in accordance with these conclusions will be issued.

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No. 1764.

AMERICAN CREOSOTING WORKS, LIMITED,  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted January 16, 1909. Decided February 1, 1909.*

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1. Manifestly it is the duty of the carrier to accommodate the needs and necessities of its shippers in regard to supplying cars as much as possible without undue discrimination; but as a practical matter it is not possible for carriers to furnish all shippers with just such cars as they would like and in such numbers and at such days and hours as would best serve the interests of shippers.
2. There is nothing unreasonable or unlawful about a tariff rule which provides that in the event of the carrier's bunching a shipper's cars and delivering them in excess of the shipper's facilities and ability to load or unload demurrage will not accrue.
3. Complainant, desiring to ship creosoted lumber from near New Orleans, La., to points in Texas, Arizona, and Mexico, requested 200 empty flat cars to be delivered at the rate of 4 a day; these cars were not delivered as requested, but on many days no cars were furnished and on some days more than 4 cars were furnished. Numbers of these cars were not loaded within the free time prescribed in the Car Service Association's rules, and demurrage accrued on them. Complainant contested these demurrage charges on the ground that defendants failed to deliver the cars at the rate of 4 cars per day, as requested; *Held*, That, upon the whole record, the Commission is unable to find these demurrage charges were in this case unreasonable or unjust. Complaint dismissed.
4. If complainant had no voice in directing the setting in of more than 4 cars per day, or if it were shown that complainant protested against the setting in of so many at one time, and its voice and protest had been ignored, there might be room to find that the demurrage charges resulting were unjust and unreasonable; but there is, however, no such showing in the record in this case.

*John Dymond* for complainant.

*Perkins Baxter* and *S. F. Andrews* for Illinois Central Railroad Company.

*J. P. Blair* and *F. C. Dillard* for Morgan's Louisiana & Texas Railroad & Steamship Company.

*H. C. Leake* for Southern Storage & Demurrage Bureau, successor to Southern Car Service Association.

15 I. C. C. Rep.

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant operates a plant for creosoting lumber and timber, located upon the rails of the Illinois Central Railroad just outside the city limits of New Orleans, La., but within the switching limits of the New Orleans terminals. Defendants, Illinois Central Railroad Company and Morgan's Louisiana & Texas Railroad and Steamship Company, are common carriers subject to the act to regulate commerce. Defendant, the Southern Car Service Association, is an unincorporated association of railroads in the city of New Orleans, and constitutes the agency through which terminal charges are assessed and collected.

Complainant, being desirous of shipping a large quantity of creosoted lumber to points in Texas, Arizona, and Mexico, made request on the Southern Pacific lines, of which defendant, Morgan's Louisiana & Texas Railroad and Steamship Company, is a part, for 200 empty flat cars to be delivered at the rate of 4 a day.

These cars could be delivered to complainant only by and through the switching service of the Illinois Central Railroad.

Cars were not delivered, as requested, at the rate of 4 per day. On many days no cars were furnished and on some days more than 4 cars were furnished.

Numbers of these cars were not loaded within the free time prescribed in the Car Service Association's rules, and under those rules, lawfully published and filed, demurrage accrued on certain of these cars to the extent of \$263, of which \$49 was paid. The Demurrage and Storage Bureau called upon complainant for payment of the balance of demurrage charges, \$214, and thereupon this complaint was filed.

Complainant alleges that demurrage accrued on these cars because of failure of defendants to deliver them at the rate of 4 cars per day, as requested. Defendant, Illinois Central Railroad Company, alleges that cars were not ordered through it; that it promptly delivered to complainant cars delivered to it for that purpose by defendant, Morgan's Louisiana & Texas Railroad and Steamship Company; that demurrage charges were assessed in accordance with the lawful tariff, and that complainant is, on that account, indebted to said defendant in the sum of \$214.

Defendant, Morgan's Louisiana & Texas Railroad and Steamship Company, admits that complainant made request for 200 empty flat or gondola cars for loading to places in Mexico and Arizona, off its own line of road; that at that time there was a general shortage of such cars; that it delivered to defendant, the Illinois Central Rail-



road Company, for delivery to complainant, as many of such cars, and as rapidly as it could with due regard to the rights of other shippers, as was possible; that it was not possible for it to furnish these cars at the rate of 4 per day.

There is no important conflict in the premises except upon the question of whether or not failure of defendants to furnish cars to complainant at the rate of 4 each day and the furnishing by them of more than 4 on some days caused the demurrage charges in question. Complainant alleges that in the transaction of its business it was not possible to advantageously handle or promptly load so many cars as were delivered on certain days.

It appears that the Morgan's Louisiana & Texas Railroad and Steamship Company delivered the cars to the Illinois Central Railroad Company, and that in the regular order of business they were delivered by switching crews at the plant of complainant. Complainant has its own switching engine or engines, but it does not appear whether or not it had those engines and did the switching inside of its plant during all the time covered by this complaint. It appears that upon arrival at the point of delivery to complainant, complainant's representative was ordinarily on the ground and gave instructions as to what cars to assemble and set in.

It appears that on one day 9 cars were delivered to complainant, on one day 16 cars, and on one day 21 cars. An itemized statement of car numbers, hour and date of delivery, hour and day upon which demurrage began to accrue, date car released, and demurrage, if any, which accrued thereon, is presented in the record. It is obvious that complainant could conduct its business more satisfactorily and economically if it could secure cars just as and when it desires them for loading, but as a practical matter it is not possible for carriers to furnish all shippers with just such cars as they would like and in such numbers and at such days and hours as would best serve the interests of shippers. The statement referred to shows that 9 cars were delivered to complainant on July 17, all of which were loaded and released without any demurrage accruing thereon. On July 20 five cars were delivered to complainant, of which 1 was loaded and released without demurrage, 3 were loaded and released with demurrage charges of \$1 and \$2, respectively, and 1 was not loaded and released until August 2. Nine dollars demurrage accrued upon this car.

On July 25 sixteen cars were delivered to complainant, upon which demurrage accrued as follows: 6 cars, no demurrage; 5 cars, \$1 each; 3 cars, \$3 each; 1 car, \$4; 1 car, \$6.

On July 29 seven cars were delivered to complainant, one of which was held until August 10 and one of which was not released until August 16.

On July 30 eight cars were delivered to complainant, the first of which was released August 3, 1 of which was retained until August 14, 1 until August 16, and 1 until August 17, although 20 of the 21 cars that were delivered to complainant on August 2 were released prior to August 17.

Of the 21 cars delivered to complainant August 2, 2 were released August 3, 1 on August 6, 3 on August 7, 3 on August 8, and the remainder on August 10, 12, 14, 16, and 17.

It is not shown that complainant objected to receiving cars when tendered in excess of 4 per day. It is shown that on July 15 complainant wrote to the superintendent of the defendant from which the cars were ordered and said it had material ready to load 50 of the cars if it could get the cars, and that complainant's representative was on the ground when cars were set in and gave instructions with relation thereto. Presumably, if it had objected to having so many cars set for loading at one time its objection would have prevailed. Each case of this kind must depend upon the facts with relation thereto. In this case complainant's actions constituted complete waiver of whatever force or effect, if any, its request that cars be delivered to it in certain number per day might otherwise have had. The record shows that complainant did not load the cars out in the order in which received; it did have, during a portion of the time at least, its own switching service and apparently could have arranged for loading and release of cars upon which demurrage was accruing and which were not loaded out until after the loading and release of cars subsequently received.

Of 82 cars shown in complainant's itemized statement only 28 were released without demurrage. As has been noted, 9 cars delivered to complainant on July 17 were all released free from demurrage charges. Of 5 cars delivered July 20, 4 accumulated demurrage, 1 to the extent of \$9. Four cars were delivered on July 22, and upon each of the 4 demurrage accrued. Two cars were delivered on July 27, and on both of them demurrage accrued. Seven cars were delivered on July 29, and demurrage accrued on each of them. On July 30, 8 cars were delivered upon each of which demurrage accrued.

It is difficult to see how defendants' delivery of cars is responsible for the demurrage accruing in any of these instances just cited.

On July 25 and August 2, 16 cars and 21 cars, respectively, were delivered, and if complainant had no voice in directing the setting in of these cars, or if it were shown that complainant protested against the setting in of so many at one time and its voice and protest had been ignored, there might be room to find that the demurrage charges resulting were unjust and unreasonable. There is, however, no such showing. On the contrary, the record shows that of the

16 cars set in on July 25, 11 were released without demurrage or with demurrage of about \$1 per car.

Manifestly it is the duty of the carrier to accommodate the needs and necessities of its shippers as nearly as is possible without discrimination against other shippers. There is nothing unreasonable or unlawful about a tariff rule which provides that in the event of the carrier's bunching a shipper's cars and delivering them in excess of the shipper's facilities and ability to load or unload demurrage will not accrue. There is here no such tariff provision. It is alleged that the deliveries were in some instances in excess of the ability and capacity of the complainant to load, but this is clearly shown only as to two dates, as it is shown that of 10 cars delivered to complainant on July 17 all were loaded out without demurrage accruing.

The demurrage charges were assessed in accordance with lawfully published tariffs, and upon the whole record we are unable to find that these charges were in this case unreasonable or unjust, and the complaint must therefore be dismissed.

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No. 1648.  
OSCAR P. TAYLOR  
v.  
MISSOURI PACIFIC RAILWAY COMPANY.

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*Decided February 1, 1909.*

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Petition for reparation herein based on alleged unreasonable rate for the transportation of lumber between Atkins, Ark., and Briggs, Okla., dismissed, because of failure of complainant to appear in the matter either in person or by counsel at the hearing.

No appearance for complainant.  
*James C. Jeffery* for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This is a petition for reparation based on the alleged unreasonableness of the rate of 16 cents per 100 pounds on lumber moving between Atkins, Ark., and Briggs, Okla., a distance of 143 miles.

This case was set for hearing and complainant duly notified. At the time set, however, the complainant failed to appear either in person or by counsel. This being primarily an application for reparation, the Commission could not make an order awarding damages in the absence of proof on the part of complainant of the extent of his injury, no proof being adduced as to any shipment made or the rate charged therefor.

While it is true that the act to regulate commerce does not presume to cast the burden of proof upon the complainant to establish the unreasonableness of a rate complained of, as would be the case in a court of law, nevertheless, a complainant before this Commission is not relieved of all responsibility as to his case upon the mere filing of a complaint. The manifest intentment of the act is that upon complaint that a rate, regulation, or practice is unjust, unreasonable, or discriminatory, the Commission will itself assume the onus of making an investigation into the question raised, provided "there shall appear any reasonable ground for investigating said complaint." The law

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does not attempt to define what shall be considered a sufficient showing to cause investigation, the conclusion of the provision "any reasonable ground," leaves the question whether investigation shall result to the legal discretion of the Commission.

We think it proper, under facts such as are here presented, that an order of dismissal should be entered, the complainant not having appeared at the hearing tendered him by the Commission for the purpose of establishing facts upon which an award of damages might be made in his favor, were the allegations of his complaint found to be true. The Commission in *Dallas Freight Bureau v. Missouri, Kansas & Texas Railway Company*, 12 I. C. C. Rep., 427, 433, spoke as follows:

The case seems to have been thrown together as if the Commission needed only to have the opportunity presented to it in order to take favorable action. But we are administering this law upon no such basis. We are authorized under the act to order a reduction in rates only when it is made to appear that they are unjust, or unreasonable, or unjustly discriminatory, or unduly preferential. Complainants must therefore prove the issues that they raise by competent testimony or make out a prima facie case sufficiently clear and strong to require the Commission in the public interest to enter upon an investigation of its own to ascertain the merits of the complaint. In our judgment the complainant has not satisfied either of these requirements.

This language was not used with the purpose of imposing a burden upon the complainant which is not imposed by the act itself, as has been mistakenly held by carriers in some cases. It was the expression of the Commission's thought that where a complainant sought to disturb a rate adjustment of long standing and affecting a large number of communities the complainant should, in justice to the Commission, take upon itself the burden of establishing clearly the necessity for an investigation and the reasonableness of its demand. It was not intended thereby to set any new basis for the Commission's orders, but to emphasize, as the language quoted shows, the duty of a complainant to at least present some reasonable ground which will require the Commission to satisfy itself whether the law is or is not being violated.

An order dismissing the complaint will be issued.

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No. 1617.

MARBLE FALLS INSULATOR PIN COMPANY

*v.*

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY  
ET AL.

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*Submitted October 16, 1908. Decided February 1, 1909.*

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The unreasonableness of a through rate upon an interstate shipment via a given route can not be determined, in the absence of other evidence, by a mere comparison therewith of a lower aggregate of rates consisting of a local intrastate rate plus an independent interstate rate based upon a junction through which the carriers have no joint route and no basis of division.

*T. B. Cochran* for complainant.

*H. M. Garwood* for Houston & Texas Central Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

This case is one that asks reparation upon the assumption that wherever a through rate upon an interstate shipment is higher than the sum of two independent rates, an intrastate plus an interstate rate, via a different route, the through rate is unreasonable.

About June 8, 1907, the complainant delivered to the Houston & Texas Central Railroad at Marble Falls, Tex., one carload of cedar insulator pins weighing 30,000 pounds billed to St. Louis, Mo., without routing instructions. The car moved via the lines of the initial carrier through McNeil, Tex., to Denison, Tex., whence it was forwarded by the Missouri, Kansas & Texas Railway to destination. The charges collected by the defendants amounting to \$138, being at the rate of 46 cents per 100 pounds, in accordance with the classification and tariff in force at the time. Southwestern Classification, Exceptions to Western Classification, Traffic to and from Texas, I. C. C. No. 485, specifies Class D rates for lumber and articles taking lumber rates including insulator pins. Southwestern Tariff Committee Tariff No. 20-S, I. C. C. No. 461, fixes the rate on articles in Class D from Marble Falls, Tex., to St. Louis, Mo., at 46 cents.

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Complainant alleged that the charge so collected was excessive, unreasonable, and unjust; that a reasonable charge would have been 35 cents per 100 pounds, or an aggregate of \$105; and that the defendants had exacted an overcharge of \$33, for which amount the complainant asked reparation. The basis for this claim for reparation was that inasmuch as the shipper had given no routing instructions it was the duty of the initial carrier to forward the shipment via the cheapest route, which was alleged to be via its own lines to McNeil, Tex., and thence via the International & Great Northern Railroad and its connections to St. Louis, Mo.

At the hearing, the complainant having referred to the tariffs cited herein, attention was called to the fact that no evidence had been offered to show the unreasonableness of the rate attacked other than such as might be inferred from said tariffs. The complainant offered, however, no further evidence.

The facts developed at the hearing, and confirmed by an examination of the tariffs on file with the Commission, show that the through rate on this shipment was 46 cents per 100 pounds by all routes. If the shipment had been routed via McNeil and thence over the International & Great Northern Railroad to destination, and if the initial carrier had accepted the billing, the through rate would have been 46 cents under the classification and tariff heretofore cited, the International & Great Northern Railroad as well as the Houston & Texas Central Railroad having concurred therein. This route, however, was not a practicable or open one, as the carriers had no basis for division of rates based on McNeil and as reasonable routes based upon other junctions were in existence. If the shipper had billed the car to McNeil, Tex., and had received the same at that point, paying the charges then accrued, a local rate of 12 cents per 100 pounds under the tariff of the railroad commission of Texas, Class Rates No. 3, would have applied; and if the complainant had, at McNeil, reshipped said carload to destination via the International & Great Northern Railroad, then a commodity rate of 23 cents per 100 pounds would have applied in accordance with I. & G. N. Tariff I. C. C. No. 357. This tariff does not show the Houston & Texas Central as concurring therein. Under the decision of the Supreme Court in the case of the *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S. 403, the latter method was the only one by which the shipper could have availed itself of the intra and interstate rates of the carriers resulting in an aggregate of rates equal to 35 cents per 100 pounds.

It is to be observed that the intrastate rate from Marble Falls to McNeil and the interstate rate from McNeil to St. Louis are based upon a junction via which the carriers have no basis of division and

that these separate and independent rates can not be regarded as local rates which may be combined and compared with a through interstate rate via a route passing through a different junction. The evidence shows that Marble Falls is not a lumber shipping point and that the shipment of insulator pins referred to is the only one that has moved therefrom.

Our conclusion is that the complainant is not entitled to reparation, and that the complaint must be dismissed because the unreasonableness of the through rate of 46 cents upon the shipment in question, moving via Denison, can not be determined, in the absence of other evidence, by a mere comparison therewith of a lower aggregate of rates, of 35 cents, consisting of a local intrastate rate of 12 cents from point of origin to McNeil, plus an independent interstate rate of 23 cents from McNeil to destination, the carriers having no joint route via McNeil and no division of freights based on that point.

An order in accordance herewith will be issued.

15 I. C. C. Rep.



No. 1726.

WOODWARD &amp; DICKERSON

v.

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY ET AL.

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Submitted December 5, 1908. Decided February 1, 1909.

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1. Complainant shipped 2 carloads of crude phosphate rock from St. Blaise, Tenn., to Riddlesburg, Pa., but instead of the shipments going over the route directed at the published rate of \$3.45 per gross ton, they were diverted at Cincinnati by the initial carrier to another route over which the \$3.45 joint rate did not apply. Upon complaint asking damages for the excess charged caused by such misrouting; *Held*, That this Commission has jurisdiction to award damages for diversion of shipments under such circumstances, and that complainant should be awarded damages.
2. Though the shipments forming this cause of action were made in November and December, 1905, it appeared that in September, 1907, complainant filed a letter with the Commission setting forth the facts of the case. This letter constitutes a sufficient complaint under the law and bars the running of the statute of limitations. *Nicola, Stone & Myers Co. v. Louisville & Nashville R. R. Co.*, 14 I. C. C. Rep., 206, cited and approved.
3. The Commission declines to modify its administrative rulings numbered 60, 70, and 83, in regard to misrouting and liability therefor, under the pleadings in this case; but if there is any modification of these rulings which may properly be made, the Commission will entertain any suggestion that carriers may make without the formality of a complaint.

*Joseph W. Cox* for complainant.

*William G. Dearing* for Louisville & Nashville Railroad Company.

*Allen S. Bowie* for Baltimore & Ohio Southwestern Railroad Company.

#### REPORT OF THE COMMISSION.

LANE, *Commissioner*:

On September 8, 1908, formal complaint was made that on November 23, 1905, and December 6, 1905, there were delivered to the Louisville & Nashville Railroad Company, at St. Blaise, Tenn., 2 carloads of crude phosphate rock (one containing 58,000 and the other 52,000 pounds) for shipment to Riddlesburg, Pa., at a rate of \$3.45 per gross ton, which was the joint rate then in effect via the Louisville & Nashville Railroad, the Pittsburg, Cincinnati, Chicago & St. Louis Railway, the Pennsylvania Railroad, and the Huntington & Broad Top Mountain Railroad.

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When the cars reached Cincinnati the Louisville & Nashville Railroad Company diverted them to the Baltimore & Ohio Southwestern Railroad, over which the \$3.45 joint rate did not apply. Upon delivery of the cars at Riddlesburg the Huntington & Broad Top Mountain road collected \$171.10 and \$153.13 for the transportation of said cars, a total of \$324.23, which was \$154.81 in excess of the rate that would have been applied had the cars moved by the route over which the joint rate obtained. Of this overcharge it is admitted that \$6.60 was due to a clerical error as to weight on the part of the delivering carrier.

The Louisville & Nashville road pleads as an excuse for delivery to the Baltimore & Ohio Southwestern that when the shipments arrived at Cincinnati the Pittsburg, Cincinnati, Chicago & St. Louis was unable to give expeditious movement to the cars owing to congestion of traffic, and therefore "in the general interest" it secured the consent of the Baltimore & Ohio system to haul the freight and "protect" the through rate of \$3.45 in effect via the the Pennsylvania Lines in accordance with a practice then in vogue that in cases of emergency where through rates were published via one route carriers would protect the same rate via other lines. This right of diversion the Louisville & Nashville claimed by reason of a provision in the bill of lading furnished the consignors reading as follows:

Every carrier shall have the right, in case of necessity, to forward said property by any carrier between the point of shipment and the point to which the rate is given. All additional risks and increased expenses incurred by reason of change of route in cases of necessity shall be borne by the owner of the goods and be a lien thereon.

The Louisville & Nashville moves to dismiss this complaint upon several grounds, the first of which is that the claim is barred under section 16 of the act. The shipments were made in November and December, 1905, and payment was made to carrier on December 26, 1905. On September 5, 1907, the Interstate Commerce Commission received the following communication:

PHILADELPHIA, PA., *September 4, 1907.*

GENTLEMEN: On November 23, 1905, we shipped car N. Y. C. & H. No. 65401, 58,000 pounds, and on December 6, 1905, car N. Y. C. & H. No. 24023, 52,000 pounds, both from St. Blaise, Tenn., containing crude phosphate rock consigned to us at Riddlesburg, Pa., care of Huntington & Broad Top Mountain Railroad. These shipments were based on rate of \$3.45 per 2,240 pounds and bills of lading show this rate. Upon arrival at destination we were overcharged \$154.81, and the Pennsylvania Railroad Company, who collected the money from us, and to whom we presented claim on January 5, 1906, have declined to reimburse us, claiming that the Louisville & Nashville Railroad turned the shipments over to the Baltimore & Ohio Railroad instead of to the Pennsylvania Railroad connections, and since the Baltimore & Ohio Railroad could not reach Riddlesburg, when the Pennsylvania Railroad Company did get the cars, considerable extra expense had been incurred.

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The Pennsylvania Railroad explains further that the Louisville & Nashville Railroad has refused to be responsible for this misshipment, and although the matter has several times been called to the attention of General Freight Agent D. M. Goodwyn, of the Louisville & Nashville Railroad, no attention is paid to us. Hence, we ask your support in our efforts to collect this \$154.81 and interest.

Thanking you in advance for your consideration, we are,

Very truly, yours,

WOODWARD & DICKERSON,  
By S. D. KEIM.

INTERSTATE COMMERCE COMMISSION,

Washington, D. C.

As to the Louisville & Nashville Railroad, at least, this letter constitutes a sufficient complaint under the law, and, following the ruling in the case of *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C. Rep., 206, the complaint was filed within the statutory period.

The most important question raised by the motion to dismiss in this case is that of the jurisdiction of this Commission to award damages for the diversion of a shipment from a route prescribed by the consignor. There is but one theory upon which such jurisdiction may be upheld, namely, that by such diversion some provision of the act to regulate commerce has been violated, as the power of the Commission to award damages is limited to such cases as arise out of violation of the act. Wherein, therefore, does the law provide that carriers who accept shipments must carry them via any specific route and be responsible for damages in the event of failure so to do? It may be flatly stated that no such mandate is to be found in the law; nevertheless, we think it clearly and necessarily arises from the provision that carriers may make such joint rates and publish same, together with all privileges extended, and "any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee" (section 6).

The Louisville & Nashville made a joint arrangement with other carriers for the transportation of phosphate rock from St. Blaise, Tenn., to Riddlesburg, Pa., and published that rate as its rate. The rate was a unit and the route was a unit. In its tariffs the Louisville & Nashville Railroad did not reserve the right of diversion to any other route over which a higher rate would necessarily and legally be applicable. To be sure a provision in its bill of lading attempted to do this, but such provision being outside its tariff announcement was in no sense a limitation upon the right of the shipper to have his commodity transported in the manner and at the rate specified in the rate schedule. *Baltimore & Ohio R. R. v. Hamburger*, 155 Fed. Rep., 849.

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It is no longer strictly correct to speak of the contract of shipment and the bill of lading as evidencing the terms of such contract, for under a governmental-prescribed system of publishing rates a carrier is not free to contract with respect to the rate, but is required by law to perform a service for the public under the tariffs of charges and regulations, which, though furnished by it, are legally enforceable, not by reason of any contract, but by virtue of the legal prescription. To say, therefore, that a carrier in diverting a shipment from a route which it has made under sanction of the law is only liable for breach of contract, and that in a court of law, is to gravely misconstrue the purport of the act to regulate commerce. This statute commands that carriers shall provide for certain transportation and shall make public the rates applicable thereto, and that the carrier who omits to do what is required to be done shall be liable to the person injured for the full amount of the damages sustained. The Louisville & Nashville Railroad failed to furnish the transportation it held itself out to give at the rate which it announced, and for this failure the shipper is entitled to the damage which he suffered, the difference between the amounts imposed by the carriers upon the shipments made and the legally published joint rate which would have been applied had the shipments moved over the through route established by the Louisville & Nashville and its connections. Damages will therefore be awarded in the sum of \$154.81.

Petition is made by the Louisville & Nashville in this case that it and all other carriers be relieved of the strict and literal compliance with certain administrative rulings of the Commission (60, 70, and 83), to the general effect that the published tariffs must be adhered to by carriers, and that when freight is misrouted by carrier, either intentionally or unintentionally, the legal rate over the route by which the freight actually moved must be charged and collected, and that the additional burden in the charge, if any, must be borne exclusively by the carrier which caused the diversion. It is said that these rulings constitute "arbitrary, unreasonable, and unlawful restraint of interstate commerce," and that they should be so modified as to admit diversion in cases of emergency or necessity by allowing the freight to be delivered to some other carrier than that which is a party to the joint through rate; that such carrier shall have the privilege of applying to the movement over its line the proportion of such joint rate which would have been earned by the carrier a party to the joint rate from whose line the freight was diverted. In other words, it is asked that the ruling be made so flexible as to permit, in case of diversion upon the ground of emergency, the application of a rate which the carrier has not filed.

Our attention is not directed, however, to any provision of the act by which we may waive its positive provisions. The law at present permits the Louisville & Nashville to make a joint rate with the Baltimore & Ohio system so that shipments may move via that route if it is desirable, but it does not seem to be provided in the law that one party to a joint rate and through route may divert freight at the expense of the shipper. If there is any modification of these rulings which may properly be made, the Commission will entertain any suggestion that carriers may make without the formality of complaint. An order will be made in accordance with the views herein expressed.

15 I. C. C. Rep.

No. 1495.

HYDRAULIC PRESS BRICK COMPANY

v.

VANDALIA RAILROAD COMPANY ET AL.

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*Submitted January 4, 1909. Decided February 1, 1909.*

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Reparation awarded against all the defendants herein for unreasonable charges in the transportation of shipments of pressed brick in carloads from Collinsville, Ill., to Galveston, Tex.; and reparation awarded also against the delivering carrier for the sum collected by mistake in excess of that fixed in the tariffs.

*William S. Bedal* for complainant.

*J. G. Egan* for St. Louis & San Francisco Railroad Company and St. Louis, San Francisco & Texas Railway Company.

*F. C. Dillard* and *L. T. Wilcox* for Galveston, Harrisburg & San Antonio Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

Between April 22 and August 3, 1907, the complainant shipped 7 carloads of pressed brick from Collinsville, Ill., to Galveston, Tex., aggregating 395,500 pounds in weight. The movement was via the Vandalia Railroad to St. Louis and over the other defendants from St. Louis to Galveston.

When this shipment moved, there was in effect between these defendants a joint through rate of 27 cents per 100 pounds from Collinsville to Galveston. It was the intention of the defendants to apply this to the shipment, but by mistake the delivering road, the Galveston, Harrisburg & San Antonio Railway, assessed against 5 of these cars a charge of 30 cents per 100 pounds, resulting in the collection by that company of \$89.76 in addition to what would have been collected under the rate of 27 cents. That company has settled with its connections upon the basis of the 27-cent rate and still holds this \$89.76, which we understand from the record it is willing to return to the complainant.

At the time of this movement there was in effect from St. Louis to Galveston a rate of 22 cents upon pressed brick. The joint through

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rate of 27 cents was constructed by adding an arbitrary of 5 cents to the 22 cents. This same arbitrary was added in establishing the joint rate from a large section of territory north of the Ohio River known as the Chicago-Cincinnati territory. From all this territory the rate on brick to Galveston was at that time 27 cents.

Collinsville is in close proximity to East St. Louis, and the rate from Collinsville to East St. Louis, over the Vandalia, was 1 cent per 100 pounds. The complainant insists that it ought not to be charged for the through shipment in excess of the combination of locals upon East St. Louis. This position of the complainant is well taken. While these defendants might, if they saw fit, create a group from which a blanket rate 5 cents above the St. Louis rate should apply, this must be subject to the limitation that from no part of that group could a lower rate be constructed by using the local rate to St. Louis. To impose upon any point in this territory a higher rate than could be so obtained would be denying to that point the just benefit of its location. We find, therefore, that at the time of this movement 23 cents was a reasonable rate and that anything in excess of that charge was unjust and unreasonable. We therefore find that the complainant, in addition to the \$89.76 before mentioned, is entitled to recover of the defendants as reparation the sum of \$158.20.

Subsequent to the movement of these shipments the rate on brick from St. Louis to Galveston was advanced from 22 to 24 cents, so that the combination from Collinsville is now 25 cents. Shall we order these carriers to apply for two years the 23-cent rate, which we found to be reasonable when these shipments moved, or shall we make no order as to the future?

It was stated upon the hearing that the complainant and the defendants had agreed that reparation should be awarded upon the basis of a 23-cent rate, but that no order should be made establishing that rate for the future. The Commission can not recognize such agreements between parties. This rate on brick is not a thing which concerns this complainant alone, but is rather a matter of general public importance. It is the duty of this Commission to investigate the reasonableness of that charge, and if it finds that it is unreasonable, to establish one for the future which will be just. Ordinarily, therefore, in a case of this kind it would be incumbent upon us to inquire whether the advance was reasonable, and if not, then to order in for the future the rate upon the basis of which reparation is awarded.

In this case the advance was part of a general increase in rates into Texas and the southwest. That advance has been attacked by proceedings before this Commission, which are now in process of investigation. It does not seem, therefore, either necessary or proper to inquire into this individual rate pending that general inquiry.

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We shall therefore, in this case, make no investigation and express no opinion as to the reasonableness of the present rate from St. Louis, but simply shall make an order for reparation, retaining the case for further order as to the future if that finally seems proper.

An order will issue against the Galveston, Harrisburg & San Antonio Railway Company for \$89.76, and against all the defendants for \$158.20, with interest in both cases at 6 per cent per annum from August 3, 1907.

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No. 1626.

WILLIAM R. PILANT

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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Submitted December 23, 1908. Decided February 1, 1909.

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1. Defendants' rate on beer from Milwaukee, Wis., to Roswell, N. Mex., was at the time complainant's shipments moved 78 cents per 100 pounds, while the rate to El Paso, Tex., was 60 cents; subsequently the Roswell rate was reduced to 72 cents; *Held*, That the rate on beer from Milwaukee to Roswell, under the circumstances disclosed by the record, is not violative of the fourth section of the act, does not unduly prejudice Roswell, and should not be further reduced. Reparation denied.
2. When carriers have of their own volition made a reduction in rates, it is not the practice of the Commission to award reparation as a matter of course on all shipments made previous to the reduction. Such a policy would operate as the strongest possible deterrent to the voluntary decrease of rates. *Foster Lumber Co. v. A., T. & S. F. Ry. Co., supra*, cited and approved.

*W. L. Ford, W. E. Coleman, and H. deB. Heflin* for complainant.  
*Robert Dunlap, T. J. Norton, J. L. Coleman, and A. A. Hurd* for defendants.

## REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The primary object of the complainant herein is to secure reparation on account of certain rates charged on shipments of beer made at various times between August 24, 1904, and January 14, 1908, from Milwaukee, Wis., via the Chicago, Milwaukee & St. Paul, to Kansas City and from Kansas City to Roswell via the Atchison, Topeka & Santa Fe system. Several independent corporations make up the Santa Fe system, but it is unnecessary, for the purposes of this decision, to consider them separately.

Roswell is a station on the Eastern Railway of New Mexico (one of the corporations controlled by the Santa Fe), about 164 miles north of Pecos, the terminus of this division of the Santa Fe. Connection is here made with the Texas and Pacific road, which runs to El Paso. The Santa Fe has two lines from Kansas City into New Mexico, the main line passing through Trinidad, Colo., and Santa Fe and Albuquerque, N. Mex., with a southerly branch reaching El Paso. The other line passes through Oklahoma, the Panhandle of Texas, and,

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turning southerly, runs through Roswell to Pecos. Eastern traffic destined to El Paso via the Santa Fe does not pass through Roswell.

As a basis for the reparation demanded, complaint is made that the rate on beer from Milwaukee to Roswell was, at the time the shipments moved, 78 cents per 100 pounds, while the rate to El Paso was 60 cents, and it is claimed complainant is entitled to reparation in the sum of 18 cents per 100 pounds.

It is alleged (1) that the rate charged was in violation of the fourth section of the act, because a greater charge was made to Roswell than to El Paso, the service being over the same lines, in the same direction, under substantially similar circumstances and conditions; (2) that Roswell is subjected to an unlawful prejudice and disadvantage in favor of El Paso; and (3) that the rates are unreasonable and unjust.

On November 3, 1907, a rate of 72 cents per 100 pounds on beer from Milwaukee to Roswell was made effective, and the defendant admits that if more than 72 cents was charged on shipments subsequent to that date, complainant is entitled to a refund, which would be made upon application by complainant.

As to the charge that there was violation of the long and short haul section, it appears from the railway maps that Roswell is not an intermediate point between Milwaukee and El Paso. As above noted, traffic from Milwaukee to El Paso passes via the second or more westerly line of the Santa Fe.

As to the charge of discrimination, that seems to be based substantially upon the fact that a lower rate is in effect to El Paso than to Roswell. In the case of the *Pecos Mercantile Co. v. A., T. & S. F. Ry. Co., et al.*, 13 I. C. C. Rep., 173, the Commission gave full consideration to the question of lower rates to El Paso than to Pecos, 215 miles east of El Paso, and dismissed the complaint. It was said in the course of the opinion—

It is now well settled that competition with other carriers at a longer distance point may justify lower freight rates to that point than to neighboring shorter distance points not having the same competition. *Cincinnati, New Orleans & Texas Pacific Ry. v. Interstate Commerce Commission*, 162 U. S., 184; *East Tennessee, Virginia & Georgia Ry. v. Interstate Commerce Commission*, 181 U. S., 1; *Interstate Commerce Commission v. Louisville & Nashville R. R.*, 190 U. S., 273. El Paso is reached by four railroads, which compete for business from the points named in the complaint. Rates from those points are influenced by the location of El Paso as a Rio Grande River crossing in relation to other crossings.

Roswell is a local point on the Santa Fe, while Pecos is the junction of the Santa Fe and the Texas & Pacific.

El Paso, Eagle Pass, and Laredo are the points on the Rio Grande River, the boundary between Texas and Mexico, where the railroads of this country deliver freight for transportation into Mexico. In order that the carriers may be on a parity in competition for that

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business, these three cities have long carried similar rates from central and eastern points in the United States, which rates have been less than the rates to interior United States points. The propriety of this adjustment has been recognized in several cases before the Commission, it being held that the lower rates in effect to such points do not, ipso facto, constitute a discrimination against interior points. Following the opinions heretofore rendered, we do not find that Roswell is subjected to unjust discrimination because of a lower rate to El Paso.

The third ground of complaint is that the rate to Roswell itself is unreasonable. On June 24, 1907, in the case of the *Roswell Commercial Club et al. v. A., T. & S. F. Ry. Co.*, 12 I. C. C. Rep., 339, the Commission had under consideration all the class rates and the commodity rates on coal, grain, grain products, lumber, salt, cement, wool, hides, alfalfa and alfalfa meal, and apples to Roswell, Carlsbad, Artesia, and Hagerman, N. Mex., all local points on the Santa Fe (the Eastern Railway of New Mexico) between Texico and Pecos. After full hearing an order was entered making substantial reduction both in class and commodity rates. In the concluding portion of the opinion it was said:

As already suggested, considerable testimony was given with respect to commodities which have not been referred to in this report for the reason that they were not embraced in the complaint. From what is here decided we think the parties will be able to reach an agreement upon the other matters in dispute, and we recommend an honest attempt to do so before bringing them further to the attention of this Commission.

Subsequent to the rendering of this opinion the rate on beer to Roswell was reduced from 78 to 72 cents, and the defendant claims that the reduction was made in an honest attempt to conform to the views of the Commission. This is a commodity rate, about equivalent to Class D rates. The reduction ordered by the Commission in the above-named case on Class D traffic varied from 3 to 24 cents, the latter reduction being made on traffic from Galveston. On Kansas City traffic the reduction was 3 cents and on St. Louis traffic 4 cents. The flour rate was reduced from 47 to 42 cents, and wheat from 45 to 40 cents; lumber from 45 to 32 cents, salt from 35 to 30 cents, alfalfa from 34 to 30 cents, and apples from 50 to 45 cents.

The voluntary reduction by the carriers in the beer rate between Milwaukee and Roswell is about 6 cents. This seems to be substantially in line with the reductions made by the Commission. The rate from Milwaukee to Torance, Santa Rosa, and Albuquerque, N. Mex., for practically the same distances on the El Paso Southwestern, the more westerly line of the Santa Fe, is 80 cents. Under all the circumstances, we do not feel justified in making a further reduction of the rate on beer between Milwaukee and Roswell.

As above stated, the defendant admits that on shipments made subsequent to November 3, 1907, the charge should have been at the rate of 72 cents, and that it will refund accordingly if a higher rate has been charged. It appears from the freight bills filed that one such shipment was made on December 6, 1907. The complaint was filed July 1, 1908, so that all damages which may have accrued prior to July 1, 1906, are barred by the statute. This covers all but 13 shipments, and as to these we do not think reparation should be awarded.

When carriers have, of their own volition, made a reduction in rates, it is not the practice of the Commission to award reparation as a matter of course on all shipments made previous to the reduction. Such a policy would operate as the strongest possible deterrent to the voluntary decrease of rates. *Foster Lumber Co. v. A. T. & S. F. Ry. Co. et al.*, 15 I. C. C. Rep., 56. This 78-cent rate has been in effect for a number of years, and there can be no doubt that the complainant has made his contracts with the consuming public on that basis. We do not find that the rate was so unreasonable at the time complainant's shipments were made as to justify an order of reparation.

The complaint will be dismissed.

15 I. C. C. Rep.

No. 1667.

LINDSAY BROTHERS

v.

GRAND RAPIDS &amp; INDIANA RAILWAY COMPANY ET AL.

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*Submitted December 8, 1908. Decided March 1, 1909.*

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Complainant made 2 separate L. C. L. shipments of engines and boilers from Kalamazoo, Mich., over defendants' lines, via Chicago, one going to Woodford and the other to Argyle, Wis., for the transportation of which defendants collected rates that exceeded the combination of locals. Defendants practically admitted that rates equal to sum of the locals are reasonable for the service; *Held*, That the joint through rates at the time of shipment were unjust and unreasonable to the extent that they exceeded the combination of locals. Reparation awarded.

*W. D. Lindsay* for complainant.

*J. H. Campbell* for Grand Rapids & Indiana Railway Company.

*Blewett Lee* and *J. M. Dickinson* for Illinois Central Railroad Company.

#### REPORT OF THE COMMISSION.

*LANE, Commissioner:*

This is a claim for reparation on 2 shipments of engines and boilers from Kalamazoo, Mich., via the Grand Rapids & Indiana Railway to Vicksburg, the Grand Trunk Western Railway from Vicksburg to Chicago, and the Illinois Central Railroad from Chicago to Woodford and Argyle, Wis., one shipment going to each point.

On March 17, 1907, complainant had shipped from Kalamazoo, Mich., to Woodford, Wis., 1 engine weighing 700 pounds and 1 boiler weighing 4,600 pounds, for which it was charged \$36.25 (which amount is admitted to be an overcharge to the extent of \$1.80), at the rate of 65 cents per 100 pounds on engines and boilers.

On March 18, 1908, complainant had shipped from Kalamazoo, Mich., to Argyle, Wis., 1 engine weighing 425 pounds and 1 boiler weighing 3,050 pounds, upon which were assessed charges to the amount of \$20.66 (which is admitted to be an undercharge of \$1.93), at the rate of 65 cents on engines and boilers. It is claimed that

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the local rate from Kalamazoo into Chicago, plus the local rate from Chicago to Woodford and Argyle on boilers, makes a less rate than the through joint rate and that complainant is entitled to reparation in the amount of \$9.82, the difference between the amount charged and collected and what would have been charged had the locals referred to been used.

The tariffs on file with the Commission show rates as follows: Kalamazoo to Chicago, "engines or boilers, either or both," 26 cents; Chicago to Woodford and Argyle, "engines," 43 cents; "boliers," 26 cents; "boilers, semiportable (upright boilers with engines attached), small breakable parts removed and boxed," 34 cents. Through joint rate from Kalamazoo to Woodford and Argyle, 65 cents on "engines and boilers, either or both."

The defendants claim that the through joint rate of 65 cents is reasonable and, furthermore, that on the shipments made from Chicago to the destinations named the boiler and engine going in one shipment should bear the 34-cent rate rather than the 26-cent rate on the boiler and the 43-cent rate on the engine. The Commission can not agree to this latter contention, as the Western Classification, which governs the tariffs of the Illinois Central Railroad between Chicago and the destinations named, specifically provides that the "engine and boiler" rate applies only where the engines are attached, and the undisputed testimony in this case is that the engines and boilers were detached and had no connection of any kind, being unadapted to each other.

Prior to the ruling by the Commission that carriers must apply through joint rates when published, although the sums of the locals may result in a lower rate, these defendants published in their tariffs that when the sum of the locals was less than the through rate that the former would apply, which is a practical admission by them that a rate equal to the sum of the locals is reasonable for the service.

Some point was made that complainant was not entitled to reparation because as a matter of fact it was neither consignor nor consignee, but the evidence is conclusive that complainant bore the burden of any charge over and above what would have been charged had the shipment been made from Chicago, the result in this particular case being that complainant actually sustained the loss claimed.

From the evidence and the tariffs the Commission finds that there was actually charged on the shipment of March 19, 1907, \$36.25, and that on the shipment of March 18, 1908, \$20.66, aggregating \$56.91. Had the lowest rates, whether joint or local, been applied on these shipments, the charges would have been as follows: Shipment of March 19, 1907, engine, 700 pounds, at 65 cents, \$4.55; boiler, 4,600 pounds (Kalamazoo to Chicago, 26 cents; Chicago to Woodford, 26

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cents; total, 52 cents), \$23.92; making a total of \$28.47. On the shipment of March 18, 1908, the charges would have been as follows: Engine, 425 pounds, at 65 cents, \$2.76; boiler, 3,050 pounds (Kalamazoo to Chicago, 26 cents; Chicago to Argyle, 26 cents; total, 52 cents), \$15.86; making a total of \$18.62—the totals aggregating \$47.09.

The difference between \$56.91 and \$47.09, or \$9.82, is the amount of reparation to which complainant is entitled, as the Commission holds that the 65-cent rate on boilers, in less than carloads, is unreasonable to the extent of 13 cents per 100 pounds, and that a rate of 52 cents, the sum of the locals, is a reasonable and just charge between Kalamazoo and Woodford and Argyle, via the Grand Rapids & Indiana Railway, the Grand Trunk Western Railway, and the Illinois Central Railroad companies.

An order will be entered in accordance with the views herein expressed.

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No. 1589.

D. M. PAYNE

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAM-SHIP COMPANY ET AL.

No. 1584.

CROMBIE & COMPANY

v.

SAME.

No. 1593.

CROMBIE & COMPANY

v.

SAME.

No. 1592.

GOODMAN PRODUCE COMPANY

v.

SAME.

No. 1591.

CROMBIE & COMPANY

v.

TEXAS & PACIFIC RAILWAY COMPANY.

*Submitted October 24, 1908. Decided February 1, 1909.*

1. For six years bananas originating in Central America have been shipped from New Orleans, upon bills of lading executed at that point, as local traffic and under a rate that has not until now been challenged. Complainants contended that a subsequently issued tariff, applicable to "import traffic," should apply to these shipments because, technically, they were "import traffic."



2. The bananas are not moved under any through bill of lading. No ship's manifest is issued for them. They are brought to New Orleans in ships that are owned by the grower and owner of the bananas. Upon arrival at New Orleans the bananas pass to the custody and possession of a selling agency which distributes them under and upon local bills of lading.
3. Although inadvertent or careless wording of tariffs afforded some opportunity for misunderstanding and misconstruction of same, it is shown that the rate which is complained of and which has applied for several years was not canceled or changed during the period covered by these complaints. The period during which conflict in tariffs could be claimed extended only from February 15 to May 7, 1908. The complaint is as to shipments moved between September 3, 1906, and May 28, 1908.
4. *Held*, That rate of 82 cents per 100 pounds for transportation of bananas in carloads from New Orleans, La., to El Paso, Tex., is not unreasonable. Reparation denied.

*Rufus B. Daniel* and *V. M. Brown* for complainant.

*W. L. Hall, E. L. Sargent, F. C. Dillard, C. S. Fay, and J. R. Christian* for defendants.

#### REPORT OF THE COMMISSION.

##### *CLARK, Commissioner:*

The complainants in all these cases are wholesale dealers in bananas, located at El Paso, Tex. They complain of the rate charged for the transportation of bananas from or through the port of New Orleans, La., to El Paso by the defendant carriers. Defendants are common carriers, amenable to the act to regulate commerce. The bananas in question were grown in Central America on plantations owned or controlled by the United Fruit Company, and were transported by that company in its own ships to the port of New Orleans, consigned to itself.

After arrival at that port a constructive delivery of the bananas was made to the Fruit Dispatch Company, which acts within the United States as sales agent for the United Fruit Company. Both the United Fruit Company and the Fruit Dispatch Company are controlled and operated by the same officials and they are practically the same company. The record does not disclose whether or not the title to the bananas actually passes from the United Fruit Company to the Fruit Dispatch Company, but the bananas are always sold in the name of the Fruit Dispatch Company.

Before the bananas arrive at New Orleans no destination other than that port is given, nor does the United Fruit Company issue a ship's bill of lading or manifest for them. After arrival at New Orleans the bananas are unloaded upon wharves and assorted. The ripe ones are sold in New Orleans as they will not withstand further transportation, and the green ones are delivered to rail carriers to be transported to various points all over the United States. Local New

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Orleans bills of lading and waybills are issued by the rail carriers, the Fruit Dispatch Company taking the bills of lading in its own name.

To fill specific orders the Fruit Dispatch Company consigns car or cars directly to consignees. Other cars are consigned to itself at various distributing points and effort is made to sell the bananas before they reach those points. After a shipload of bananas leaves Central America and while it is on the water, notice of the expected arrival of the vessel is given to anticipated purchasers, upon receipt of which orders for bananas are given by wire. Upon the receipt of such order an acknowledgment is mailed to the party giving it, in which is stated conditions that are to govern future sales. Under those conditions, if they are binding upon the purchaser, which we do not decide, it is within the right of the Fruit Dispatch Company to retain or pass title to the bananas at any time, or to pay the freight charges itself, or to compel the consignee to pay them.

In filling orders for bananas from the complainants, the Fruit Dispatch Company either consigns shipments directly to them from New Orleans or assigns shipments which are en route between New Orleans and El Paso. But in all cases the complainants pay the freight charges from New Orleans to El Paso, the purchaser by his acceptance of the bananas at El Paso in effect ratifying the transportation contract previously made at New Orleans by the Fruit Dispatch Company. It might be difficult from the record in this case to determine when the title to the bananas passes from the Fruit Dispatch Company or the United Fruit Company to the complainants, but it is not necessary to determine that question. The complainants testified that the title to the bananas never in any case, whether consigned direct from New Orleans or purchased en route, passed to them until the bananas were examined and accepted by them at El Paso. The United Fruit Company transports bananas from Central America with New Orleans as the destination, but this is merely a nominal destination, as it is contemplated and known before the bananas leave Central America that they will immediately move beyond New Orleans to other points of destination within the United States. It is argued that the United Fruit Company practically has title to and control over the bananas and their transportation from point of origin in Central America to the ultimate destinations in this country. The Fruit Dispatch Company, however, intervenes and assumes constructive possession of the property and executes bills of lading from and at New Orleans.

For a period of six years the defendants, without attack from the complainants or from any other person, treated and conducted the movement of bananas as described in these cases as local traffic originating at New Orleans, and applied thereto the rate of 82 cents

per 100 pounds from New Orleans to El Paso. But the complainants allege that a reasonable charge should have been 64 cents per 100 pounds for two reasons, (1) that there has been a departure from the lawful tariff because this movement of bananas is not local traffic from New Orleans but is "import traffic" and for that reason should take a rate of 64 cents as prescribed in certain tariffs applicable to such traffic; and (2) that the rate of 82 cents is unreasonable in and of itself. The complainants ask reparation for the aggregate difference between the rate of 82 cents per 100 pounds and the rate of 64 cents per 100 pounds for shipments moved between September 3, 1906, and May 26, 1908, and it will be necessary to ascertain the rate which should have been applied during that period.

The defendants claim that the rates applicable to the shipments are shown in S. W. Tariff Committee's tariffs, while the complainants assert that a rate of 64 cents for Class A (which includes bananas) shown in G. H. & S. A. tariff, I. C. C. No. 697, and preceding issues, was the proper rate. The tariffs which the complainants present are as follows: G. H. & S. A. Ry., I. C. C. No. 505, effective from June 7, 1905, to February 28, 1907; G. H. & S. A., I. C. C. No. 636, effective from February 28, 1907, to February 15, 1908; G. H. & S. A., I. C. C. No. 674, effective February 15, 1908, to June 15, 1908; and G. H. & S. A., I. C. C. No. 697, effective June 15, 1908.

The title-page of tariff G. H. & S. A., I. C. C. No. 505, reads:

Applying on commodities from Liverpool, England (ex foreign ports. See items 46 and 49) to Texas points named herein. (Via Galveston, Texas, and New Orleans, La. See Item 47.)

By its title this tariff is applicable only on traffic from Liverpool, England, or from other foreign ports, via Liverpool. Carelessly worded items in tariff offer opportunity to misconstrue the application of the tariff, but they do not afford justification for a finding that the tariff applied to traffic from Central America. The phrase "on traffic from all foreign ports," used in one item, must be taken to mean from all foreign ports covered by the application of the tariff.

G. H. & S. A., I. C. C. No. 505, was canceled by the same company's I. C. C. No. 636, which specified the same application of tariff, and it therefore appears that neither of these tariffs was applicable to the shipments here in question.

G. H. & S. A., I. C. C. No. 636, was canceled by G. H. & S. A., I. C. C. No. 674, the title-page of which is:

Class and commodity rates on import traffic from New Orleans, La., Galveston and Texas City, Tex., to Texas points named herein.

Item 4 of this tariff reads:

Application of rates from shipside.—To obtain class and commodity rates from shipside, Galveston, Texas City, and New Orleans, add wharfage rates shown in item No. 116 to those shown in items Nos. 9, 11 to 89, and 93 to 110.

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## Item 116 reads:

Wharfage rates.—The following wharfage charges must be added to rates shown in items Nos. 9, 11 to 89, and 93 to 110 to make through rates from shipside, New Orleans, Galveston, or Texas City to destination.

Article.	Cents.
Bananas and plantains, bunch.....	64

Under item 9 the rate on Class A from New Orleans to El Paso is shown to be 64 cents. Under item 40 there is an L. C. L. rate of 52 cents on tropical fruit which does not apply from New Orleans.

Complainants contend that the movement of the bananas in question brings them within the meaning of the term "import traffic;" that the movement should be controlled by this tariff; that they move from shipside New Orleans, and that the regular published rate is 64 cents per 100 pounds plus  $\frac{1}{2}$  cent per bunch for wharfage charges. The defendants contend that this tariff does not apply because the bananas are local traffic originating at New Orleans, and not "import traffic." The application of this tariff as stated thereon is essentially different from that of the tariff which it superseded and canceled. This tariff contains wharfage charge specifically applicable to bananas, and bananas are listed in its index of commodities. Item No. 4 of this tariff specifies the manner of obtaining rates "from shipside," and Item No. 116 is directly connected by reference with Item No. 4. Defendants contend that these bananas do not move from shipside. As has already been noted, the bananas pass to the possession of the Fruit Despatch Company on arrival at New Orleans and are forwarded by rail under bills of lading executed there. They are not moved by the rail carriers "from shipside."

It has been shown that neither G. H. & S. A. tariffs, I. C. C. No. 505 nor No. 636, applied to any of these shipments. Complainants contend that same company's tariff, I. C. C. No. 674, covered also the shipments involved in case No. 1591, *Crombie & Company v. Texas & Pacific Railway Company*. This tariff, however, contained a specific provision that the rates named therein from New Orleans would apply in connection with the Texas & Pacific Railway to Bonham, Honey Grove, Paris, Terrell, and Weatherford, Texas, only. This tariff continued in effect until June 15, 1908, which date was subsequent to the latest date of shipment here in issue; and so it appears that complainants' contention is not at all supported as to the shipments involved in case No. 1591.

Complainants contend that there is a 64-cent rate on Class A shipments from Galveston to El Paso, Tex., on both import and local traffic, and that it has been defendants' custom to make rates on import traffic apply through either New Orleans or Galveston. The

defendants contend that the 64-cent rate on local traffic from Galveston is made by the railroad commission of Texas, and that there is no necessity of equalizing the rates from New Orleans and Galveston on this traffic as no bananas from Central America move via Galveston, that city receiving bananas from Mexico only. It was also asserted that bananas moving via Galveston are not treated in any way as "import traffic."

Whatever is within the meaning of the term "import traffic" must necessarily be a matter of construction, and in arriving at such construction the point of origin of the traffic, the method and mode of transportation into this country, and the point of destination must be considered. The phrase "import traffic" is so vague and indefinite as to invite rather than prevent numerous controversies as to what is and what is not covered thereby. The application of a tariff should be stated so clearly as to prevent misinterpretation, misunderstanding, or misconstruction. "Import traffic" may be import traffic when taken from the ships' side, and it may be import traffic after it has been stored at the port of entry for a substantial period, and it might be claimed still to be import traffic after it had been merchandised at the port of entry. It is therefore essential, if misunderstandings and misinterpretations are to be avoided, that the defendants and other carriers shall clearly define the phrase "import traffic" and similar phrases when used in their tariffs.

Defendants claim that G. H. & S. A. tariff, I. C. C. No. 674, replaced Morgan's Louisiana & Texas Railway tariff, I. C. C. No. 2087-B, the title-page of which reads:

Joint Freight Tariff No. 568, applying to classes and commodities from ship side, New Orleans, La., on traffic originating Europe and Cuba to Texas points shown herein.

That tariff specifically provided that it should apply to traffic imported from Europe and Cuba, while G. H. & S. A., I. C. C. No. 674, is a joint proportional tariff which includes in its application the traffic formerly covered by M. L. & T., I. C. C. No. 2087-B.

Effective May 7, 1908, G. H. & S. A. tariff, I. C. C. No. 674, was amended by Supplement No. 4, so as to restrict its application to "import traffic originating Europe, Asia, Africa, and Cuba." The reason alleged for so amending the tariff was that someone other than a shipper raised the question that since bananas were brought from a foreign country through the port of New Orleans the tariff might be construed as applying to them.

It appears that from September 10, 1905, to the present (except during period from August 18 to October 7, 1908, when Southwestern Tariff Committee tariff, I. C. C. No. 526, named rate of 88 cents) Southwestern Tariff Committee's tariff, I. C. C. No. 416, and succeeding issues contained rate applicable to bananas, carloads, minimum weight 20,000 pounds, New Orleans, La., to El Paso, Tex., 82

cents per 100 pounds. Defendants were and are members of the Southwestern Tariff Committee, and said tariffs were issued on their behalf, and bananas have been transported in accordance therewith without challenge.

It appears that for a short period, to wit, from February 15, 1908, to May 7, 1908, through inadvertence or neglect in tariff construction, G. H. & S. A. tariff, I. C. C. No. 674, was seemingly or somewhat in conflict with the tariff that contained the 82-cent rate. There was, however, no suggestion of superseding or canceling the 82-cent rate, and we are brought to the conclusion that the rate lawfully applicable to the transportation of bananas in carloads from New Orleans, La., to El Paso, Tex., during the period covered by these complaints was 82 cents per 100 pounds, minimum carload 20,000 pounds, as shown in Southwestern Tariff Committee's tariffs, and the claims for reparation must therefore be denied.

It is noted that subsequent amendments to the tariffs herein referred to more clearly state and define their application. The exercise of care by competent tariff constructors would avoid such complications as brought about these complaints.

Although complainants allege that the 82-cent rate is unreasonable per se, it is not shown to our satisfaction that such is the case. That rate does not seem to be out of line with rates approved by the commission in *Topeka Banana Dealers' Asso. v. St. L. & S. F. R. R. Co., et al.*, 13 I. C. C. Rep., 630, in which the general conditions surrounding this traffic are set forth. It is not shown that rate of 82 cents from New Orleans to El Paso is unreasonable in comparison with rate of 64 cents from Galveston to El Paso, especially in consideration of the perishable character of this traffic, the expedited service usually given thereto, and the high terminal expense at New Orleans.

The defendants assert that almost all the cars which carry bananas out of New Orleans are hired from the Pacific Fruit Express Company and the mileage between New Orleans and El Paso on each car is \$10.92. To this must be added for each car \$1.25 for equipping and slatting, \$2 for bulkheading, \$6 for false flooring, \$1 for weighing, \$1 for clerical supervision, and a switching charge of \$2 paid to the Illinois Central Railroad, which controls the rails leading to the banana wharves at New Orleans. In addition to all these expenses, defendants pay \$6 per car for loading the bananas into the cars.

Much of the country traversed by the rail lines between New Orleans and El Paso is rough, barren, sparsely settled and productive of little traffic. According to the last census the population of the country tributary to the line of railroad between San Antonio and El Paso, Tex., exclusive of those cities, was one and a half to the square mile, and, including them, three to the square mile.

It follows that complaints must be dismissed and such an order may be entered.

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No. 1703.  
**DULUTH LOG COMPANY**  
*v.*  
**MINNESOTA & INTERNATIONAL RAILWAY COMPANY**  
**ET AL.**

*Submitted November 17, 1908. Decided February 1, 1909.*

A shipment of poles was misrouted and sent over an unnecessarily expensive route. Defendants did not make allowance of 500 pounds for weight of stakes and supports. Each defendant was at that time, or immediately thereafter became, party to tariff which provided for such allowance. Reparation allowed for excess charges due to misrouting and to failure to make allowance for weight of stakes.

*V. A. Anderson* for complainant.

*W. M. Hardin* for Iowa Central Railway Company.

*J. O. Dalzell* for Northern Pacific Railway Company.

*William Ellis* and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

**REPORT OF THE COMMISSION.**

**CLARK, Commissioner:**

The complainant is a corporation engaged in the lumber business at Duluth, Minn., and seeks by this complaint to recover from the defendants, common carriers amenable to the provisions of the act to regulate commerce, damages on account of alleged misrouting of a shipment of one carload of poles shipped December 10, 1906, from Laporte, Minn., to Louisville, Ky., and for an allowance in weight of 500 pounds for stakes. Shipment originated on the line of defendant, Minnesota & International Railway, and moved via that line and the Northern Pacific Railway to Minnesota Transfer, from thence via the Chicago, Milwaukee & St. Paul Railway to Mason City Junction, Iowa, the Iowa Central Railway to Peoria, Ill., the Chicago & Alton Railroad to East St. Louis, and the Southern Railway to destination. It appears that the aggregate charges of \$167.94, excluding \$2 for demurrage at Laporte, were assessed on basis of weight of 51,200 pounds at rate of 32.8 cents per 100 pounds, whereas it is alleged they should have been assessed on weight of 50,700 pounds (allowing 500 pounds for stakes) at rate of 27 cents per 100 pounds, or \$136.89.

Defendants, the Chicago & Alton Railroad, the Chicago, Milwaukee & St. Paul Railway, and the Iowa Central Railway, deny that any responsibility attaches to them for the alleged misrouting. The joint answer of the Northern Pacific and the Minnesota & International Railways states that—

The agent of the Northern Pacific Railway Company changed the original routing at Minnesota Transfer, and caused the car to be diverted via the Iowa Central Railway, thereby causing the movement of said car via a route over which there was no joint rate.

The Southern Railway Company admits that the allowance of 500 pounds for stakes should have been made, and also admits an overcharge above the lawful tariff rate of 1.8 cents per 100 pounds. A combination rate of 31 cents per 100 pounds via Minnesota Transfer, Mason City Junction, Iowa, and East St. Louis, Ill., was in effect at the time this shipment moved, in Northern Pacific tariff, I. C. C. No. A-3071, C., M. & St. P., I. C. C. No. A-9712, and Southern Railway, I. C. C. No. C-813, as follows:

	Cents.
Laporte to Minnesota Transfer.....	9
Minnesota Transfer to East St. Louis.....	12.5
East St. Louis to Louisville.....	9.5

Northern Pacific Railway tariff, I. C. C. No. A-2829, effective July 2, 1906, and in force during December, 1906, did not name specific rate from Laporte, Minn.; it did, however, name rate on lumber, etc., from Bemidji, Minn., on the Minnesota & International Railway, to Chicago or Peoria, Ill., 16 cents per 100 pounds. Laporte, Minn., is 19 miles south of Bemidji, and would therefore be directly intermediate between that point and Chicago or Peoria. On the title-page of the tariff is the following:

Rates from Little Falls, Brainerd, Bemidji, Ripple, East Grand Forks, and intermediate points apply only on soft lumber, lath, shingles, and articles taking lumber rates in Western Classification.

The current tariff (Northern Pacific I. C. C. No. 3890, effective December 9, 1908) names specific rate of 16 cents from Laporte, Minn., to Chicago or Peoria, Ill.

Chicago & Alton tariff, I. C. C. No. 1592, effective February 12, 1906, names rate on lumber, including telegraph poles, from Peoria, Ill., to Louisville, Ky., 11 cents per 100 pounds, and this rate is still in force as per Chicago & Alton tariff, I. C. C. No. 1749.

At the hearing complainant submitted duplicate shipping receipt which it received from the agent of the Minnesota & International Railway at Laporte showing that no routing instructions were given, and counsel for the Northern Pacific stated that the shipment was received from its connection, the Minnesota & International, without



routing being specified; that it was billed to Minnesota Transfer; that the Northern Pacific agent there, without authority, changed the heading of the waybill to read Peoria, Ill., and forwarded the car via the Chicago, Milwaukee & St. Paul Railway; that Northern Pacific tariff, I. C. C. No. A-2829, contained a joint through rate via various lines to Peoria, but that there was no joint through rate or routing via the lines over which this shipment moved.

It was also alleged by counsel for the Northern Pacific that at the time this shipment moved there was no tariff provision permitting it to make an allowance of 500 pounds for stakes; that tariff provision permitting that allowance was not established until February, 1907, but that if the allowance was reasonable at that time it was reasonable in December, 1906.

Early in 1907, when the Commission revised its rules and regulations governing construction and filing of tariffs, it provided that no rule or regulation should be included in a tariff which authorized "substituting for any rate named in a tariff a rate found in any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part," and that as soon as tariffs could be reconstructed they should state clearly and specifically the rates and their application. The number of tariffs which contained indefinite maxima rules, long and short haul clauses, etc., was so large that permission was subsequently extended to continue the use and then present application of tariffs containing such provisions until a specified date, which has now expired. Northern Pacific tariff, I. C. C. No. A-2829, was not specifically applicable from Laporte on account of that point being intermediate between Bemidji and Peoria, but there appears to be no question that at the time this shipment moved the rate was customarily so applied. As has been indicated counsel for the Northern Pacific admits the applicability of the through rate from Laporte to Peoria. Undoubtedly, this is such a case as was provided for in the Commission's Special Circular No. 6 of January 7, 1908.

We therefore find that on account of misrouting of this shipment by the agent of the Northern Pacific complainant is entitled to reparation in the sum of \$20.48, the difference between the charges on the shipment at rate of 31 cents and at the rate of 27 cents.

As above indicated we find that the Southern Railway overcharged the complainant in the sum of \$9.22 or 1.8 cents per 100 pounds on weight of 51,200 pounds. It appears that in the aggregate charges there was included a charge of \$2 for demurrage which accrued at Laporte, Minn. Nothing indicates that this charge was not lawfully assessed and no contention was made against it.

Northern Pacific Railway tariff, I. C. C. No. A-2829, did not contain provision for allowance for stakes and supports, but Amendment No. 24 to Western Trunk Lines' Rules Circular, I. C. C. No. 571, effective November 5, 1906, and in force when this shipment moved, did provide for such allowance.

Defendants, the Chicago, Milwaukee & St. Paul Railway, the Iowa Central Railway, and the Northern Pacific Railway, were participants in this tariff, under which the allowance was applicable on all shipments destined to the Mississippi River, Chicago, or Peoria. Defendant, the Minnesota & International Railway, was not a party to this Western Trunk Lines' Rules Circular, but was a party to Northern Pacific tariff, I. C. C. No. A-2829.

An allowance of 500 pounds for stakes, etc., on shipments from Peoria to East St. Louis, was in force at the time this shipment moved in Rule 19-A of Official Classification No. 28.

It will thus be seen that at the time this shipment moved all of the defendants, with the exception of the Minnesota & International Railway, were parties to tariffs which provided an allowance of 500 pounds for stakes.

In *National Wholesale Lumber Dealers' Asso. et al. v. Atlantic Coast Line R. R. Co. et al.*, 14 I. C. C. Rep., 154, it is seen that the "principal railways operating in Official and Western Classification territories agreed to make an allowance of 500 pounds for racks, stakes, and blocks furnished by shippers on flat and gondola cars loaded with freight requiring their use."

This agreement was reached at hearing had in Chicago in October, 1906, and it was understood at that time that the carriers defendants in those cases would, as early as practicable, make tariff provision for such allowance.

In view of the tariff provisions, the admission of defendant, the Northern Pacific Railway Company, and the agreement above referred to, we find that complainant is entitled to an allowance of 500 pounds for stakes used in equipping the car for this shipment, and, therefore, to additional reparation in the sum of \$1.35.

An order will be entered requiring defendant, the Northern Pacific Railway Company, on account of misrouting of this shipment by its agent, and without recourse upon any other carrier or person for any part thereof, to pay to the complainant the sum of \$20.48; directing defendants, the Minnesota & International, the Northern Pacific, the Chicago & Alton, the Chicago, Milwaukee & St. Paul, and the Southern Railway companies to pay to the complainant as allowance of 500 pounds in weight for stakes, etc., the sum of \$1.35, and directing defendant the Southern Railway Company to refund to the complainant the admitted overcharge of \$9.22.

15 I. C. C. Rep.

No. 1308.  
BARRETT MANUFACTURING COMPANY  
v.  
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

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*Submitted December 17, 1908. Decided February 1, 1909.*

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Defendants ordered to establish and maintain for the transportation of coal-tar paving cement from Ensley, Ala., to Lagrange, Ga., the same classification and commodity rates that are in force at the same time on coal-tar pitch. Reparation awarded.

*Paul Waddell* for complainant.

*S. F. Andrews* and *Perkins Baxter* for defendants.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

Complainant manufactures and sells a commodity called "coal-tar paving cement" and other by-products from the manufacture of gas or coke. Defendants are common carriers, amenable to the act to regulate commerce.

On October 26, 1906, complainant shipped 4 carloads of this coal-tar paving cement from Ensley, Ala., to Lagrange, Ga., via the lines of the defendants, upon which complainant alleges a rate of 17 cents per 100 pounds was charged, aggregating \$319.51, when a reasonable rate would have been 12 cents per 100 pounds. Reparation is claimed in the sum of \$107.52.

Complainant alleges that coal-tar paving cement is used in direct competition with ordinary hydraulic, natural, or Portland cement; that it is as desirable a commodity to transport and should not bear higher transportation charges. A reasonable classification of this commodity is prayed for.

The agent of the Atlanta & West Point Railroad being asked for quotations of rates from Ensley, Ala., to Lagrange, Ga., on building paper, coal-tar pitch in barrels, and coal-tar paving cement, quoted rates on building paper, on coal-tar pitch, on coal-tar, and on paving cement, not understanding what was meant by the term "coal-tar paving cement;" he took it to mean two commodities—coal tar and paving cement. The rate on hydraulic cement, 12 cents per 100 pounds, was therefore quoted on paving cement.

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Coal tar, coal-tar pitch, and coal-tar paving cement are somewhat different consistencies of exactly the same product. The coal tar is liquid in form and the coal-tar pitch and coal-tar paving cement are in a semisolid form and are liquefied by heat.

In some way not accounted for the charges on 1 of the 4 carloads covered by this complaint were assessed at the rate 14.66 cents per 100 pounds and on the other 3 carloads at 19.15 cents per 100 pounds. Neither of these rates is or was at that time quoted in any tariff.

After this complaint was filed it was discovered that while defendants had a commodity rate on coal-tar pitch from Ensley, Ala., to Lagrange, Ga., of 16.5 cents per 100 pounds, coal-tar paving cement was provided for only by a class rate of 30 cents per 100 pounds.

Coal-tar pitch and coal-tar paving cement are both classified in Class A of the Southern Classification.

No complaint is made that the rate on coal-tar pitch from Ensley to Lagrange is unreasonable.

It is admitted by complainant and by defendants' witnesses that no one other than an expert in the manufacture of these commodities could detect the difference between coal-tar pitch and coal-tar paving cement, even if the packages containing them were opened.

Defendants classified coal-tar paving cement with asphalt, arguing that if it were a paving substance such classification was proper. Complainant argued that coal-tar paving cement served the same purpose as hydraulic cement, and that it should therefore have the same classification. We can not accept either of these theories. Coal-tar paving cement does not serve the same purpose as does asphalt or as hydraulic cement.

It is liquefied by heat and poured into interstices between stone blocks with which a street has been paved. It is coal-tar pitch treated to a somewhat stiffer consistency. In fact, a part of the 4 carloads herein discussed was used for roofing purposes and a part was used for paving purposes.

The general freight agent of defendant Atlanta & West Point Railroad Company admitted that 30 cents per 100 pounds is a high rate to apply on coal-tar paving cement from Ensley, Ala., to Lagrange, Ga., and stated that if a commodity rate had been sought before shipment was made it is probable that it would have been provided.

Since this complaint was filed defendants have made claim upon complainants for uncollected undercharges, based upon the 30-cent class rate, and it is understood that enforcement of such claim is delayed awaiting determination by the Commission as to a reasonable rate.

The practical identity of coal-tar pitch and coal-tar paving cement would no doubt lead the Commission to refrain from fixing a separate

rate for coal-tar paving cement but for the fact that defendants have already recognized its individuality by specifying it in their classification. No reason is presented for any difference in transportation charges on coal-tar pitch and coal-tar paving cement. They are shipped in identical packages, and from every transportation standpoint are the same commodity. Defendant's rate on coal-tar pitch from Ensley, Ala., to Lagrange, Ga., at the time the shipments here in question moved, was 16.5 cents per 100 pounds. The reasonableness of this rate is not challenged, and we find that a higher rate on coal-tar paving cement than on coal-tar pitch was, and is, and for the future would be, unjust and unreasonable.

We find that it is reasonable, just, and proper, to include coal-tar pitch and coal-tar paving cement in the same classification, and to also include both commodities in any commodity rate that is established for either of them.

The complainant actually paid on the 4 carloads in question charges aggregating \$319.51. We find that a reasonable and lawful rate upon these shipments would have been 16.5 cents per 100 pounds. Complainant is therefore entitled to reparation in the sum of \$27.71, the difference between the amount which he actually paid and what the charges would have been at the rate of 16.5 cents.

An order will be entered requiring defendants to establish and maintain for the transportation of coal-tar paving cement from Ensley, Ala., to Lagrange, Ga., the same classification and commodity rates that are in force at the same time on coal-tar pitch.

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No. 1552.  
MONTGOMERY FREIGHT BUREAU  
v.  
WESTERN RAILWAY OF ALABAMA ET AL.

*Submitted January 2, 1909. Decided February 1, 1909.*

The through rates on fertilizer from Montgomery, Ala., to points on the Mobile, Jackson & Kansas City Railroad north of Newton, in the State of Mississippi, were reduced after complaint challenging such rates had been set for hearing. The complainant being satisfied with this readjustment, the complaint is dismissed.

*H. S. Kealhofer* for complainant.

*Ed. Baxter* and *Sidney F. Andrews* for Western Railway of Alabama, Mobile & Ohio Railroad Company, New Orleans & North-eastern Railroad Company, and Alabama & Vicksburg Railway Company.

*Ed. Baxter* and *Claudian B. Northrop* for Southern Railway Company.

*E. B. Peirce* for St. Louis & San Francisco Railroad Company.

*W. L. O'Dwyer* for Mobile, Jackson & Kansas City Railroad Company.

REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

The Montgomery Freight Bureau complains of the published through rates on fertilizer in carloads from Montgomery, Ala., to practically all stations on the line of the Mobile, Jackson & Kansas City Railroad in the State of Mississippi; and alleges that they are unlawful for the reason (a) that they are in excess of the sum of the local rates, and (b) because in the competition between shippers of fertilizer from Montgomery and from New Orleans the rate adjustment to some of the destinations referred to gives an undue advantage to the latter.

The several carriers in their respective answers defended the reasonableness of the published through rates between the points in question, thus raising a definite issue, which in due course was set

for hearing. Shortly after the defendants had been notified that testimony would be taken on a day certain, they offered, in a conference with the complainant, to reduce the rates complained of as to certain of the destinations named in the petition. The taking of testimony was thereupon postponed at the request of the parties, and later the Commission was advised by the complainant of its willingness to accept the proposed readjustment as a reasonable satisfaction of its grievance. It is our understanding also that the readjustment agreed upon by the parties has been made effective by amended tariffs filed by the defendants with the Commission. The complaint is now ready, therefore, for final disposition upon the motion of the petitioner to discontinue its action.

An order will therefore be entered dismissing the complaint.

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# MEMORANDUM: WHEN A CAUSE OF ACTION ACCRUES UNDER THE ACT TO REGULATE COMMERCE.

*Decided February 2, 1909*

In complaints for recovery of damages caused by unreasonable or unduly discriminatory rates, the cause of action accrues when the payment is made; in any other complaints for recovery of damages for alleged violations of the act to regulate commerce of which this Commission has jurisdiction, the cause of action accrues when the carrier does the unlawful act or fails to do what the law requires.

## REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The language of the act is:

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after.

The word "damages" evidently refers to the money value of any loss caused by any violation of the act. When does the cause of action accrue?

In American and English Encyclopedia of Law it is said:

The statute of limitations begins to run from the time when the plaintiff's cause of action accrues, unless some recognized exception postpones its operation. This rule is never questioned; the difficulty lies in determining when the cause of action is to be deemed as having accrued.

A cause of action does not accrue until the party owning it is entitled to begin and prosecute an action thereon; it accrues at the moment when he has a legal right to sue on it and no earlier.

In Bouvier's Law Dictionary it is said:

A cause of action is said to accrue to any person when that person first comes to a right to bring an action. A cause of action does not accrue until the existence of such a state of things as will enable the person having the proper relations to the property or persons concerned to bring an action.

In the Encyclopedia of Law and Procedure it is said:

The statute of limitations begins to run from the time when a complete cause of action accrues; that is, when a suit may be maintained, and not until that time.

The accrual of a cause of action means the right to institute and maintain a suit; and whenever one person may sue another, a cause of action has accrued and the statute begins to run. So whether at law or in equity, the cause of action accrues when, and only when, the aggrieved party has the right to apply to the proper tribunal for relief. The statute does not attach to a claim for which there is no right of action

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and does not run against a right for which there is no corresponding remedy or for which judgment can not be obtained. The true test, therefore, to determine when a cause of action has accrued is to ascertain the time when the plaintiff could first have maintained his action to a successful result.

In the case of *United States v. Clark*, 96 U. S., 37, Clark was a United States Army officer and on April 6, 1865, lost from his safe a valuable package containing \$15,979.80. He duly reported his loss to the proper Treasury officials and claimed credit for the amount. His claim was rejected in 1871, and within six years thereafter he brought his action in the Court of Claims under the act of Congress, asking the court to find the loss was without fault on his part and to require the amount to be allowed by the Treasury in the settlement of his account. The United States pleaded limitation, under the law which says:

Every claim against the United States, cognizable in the Court of Claims, shall be forever barred unless the petition is filed within six years after the claim first accrues.

The court said:

We think it is a principle of general application that so long as a party who has a cause of action delays to enforce it in a legal tribunal, so long will any legal defense to that action be protected from the bar of the lapse of time, provided it is not a cross demand in the nature of an independent cause of action. But if we are mistaken in this, it is clear that until the accounting officers of the Treasury had refused to recognize the sum lost as a valid credit in the settlement of his account, there was no occasion to apply to the Court of Claims and the statute, if applicable to this class of claims at all, did not begin to run until then.

In the dissenting opinion of Mr. Justice Harlan, concurred in by Justices Swain, Clifford, and Strong, it was held that the claim was barred, and was said:

In general it may be said that it is a rule in courts of equity as well as in courts of law that a cause of action or suit arises when and as soon as the party has a right to apply to the proper tribunals for relief.

In the case of *United States v. Taylor*, 104 U. S., 216, under the direct-tax act of August 5, 1861, requiring the surplus of real estate sales to be deposited in the Treasury and there held for the use of the owner, the United States denied the jurisdiction of the Court of Claims over the suit of Taylor, because his application to the Treasury for the surplus and the filing of his suit were both more than six years after the sale. The court said:

The general rule is that when a trustee unequivocally repudiates the trust and claims to hold the estate as his own and such repudiation and claim are brought to the knowledge of the cestui que trust in such manner that he is called upon to assert his rights, the statute of limitation will begin to run against him from the time such knowledge is brought home to him and not before.

In analogy to this rule, the right of the owner of the land to recover the money which the Government holds for him as his trustee did not become a claim on which suit could be brought, and such as was cognizable by the Court of Claims, until demand

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therefor had been made at the Treasury. Upon such demand the claim first accrued, and as the suit was brought within six years from the date of demand it falls within the term of the section giving jurisdiction to the Court of Claims and is not cut off by lapse of time.

In the case of *Rice v. United States*, 122 U. S., 611, the question arose under the six years limitation, and the court said:

The claim first accrues within the meaning of the statute, when a suit may first be brought upon it, and from that date the six years limitation begins to run.

The Clark and the Taylor cases, hereinbefore quoted, were referred to approvingly.

In the case of *United States v. Louisiana*, 123 U. S., 32, the state of Louisiana sued the United States for \$23,855 on account of sales of swamp lands to individuals made prior to March 3, 1857. Under the swamp-lands act of Congress, of September 28, 1850, all the swamp and overflowed lands unfit thereby for cultivation and then unsold were granted to the respective states, and the Secretary of the Interior was required to prepare and transmit a list to the governors of the states and issue patents therefor. This was not promptly done and many of such lands were sold to other parties by the United States. The act of March 2, 1855, provided that upon due proof of such sales by the states before the Commissioner of the General Land Office, the purchase money of such lands should be paid over to the states. Such proof was not made, but the Commissioner of the General Land Office, as to the character of the lands, accepted the field notes of the surveyor-general of the state as sufficient proof, and on the 30th of June, 1885, found the amount claimed to be due the state from the United States. Louisiana prevailed in the court below and the United States, having pleaded limitation, appealed to the Supreme Court. That court held:

The statute of limitations does not seem to us to have any application to the demand arising upon the swamp-land acts. The method of proving the character of such lands by having recourse to the field notes of the public surveys of the surveyor-general of the state was adopted by the commissioner as early as 1850 and was followed by him in this case in 1855. On the 30th of June of that year he found in this mode and certified that there was due to the state from such sales the amount stated above. From that date only the six years within which the action could be brought in the Court of Claims began to run and this action was commenced in September of the following year.

The Commission has already decided that—

A cause of action accrues, as that phrase is used in the act, on the date on which the freight charges are actually paid.

And that—

Claims filed since August 28, 1907, must have accrued within two years prior to the date when they are filed, otherwise they are barred by the statute. Claims filed on or before August 28, 1907, are not affected by the two years' limitation in the 15 I. C. C. Rep.

act. This Commission will not take jurisdiction of or recognize its jurisdiction over any claims for reparation or damages which are barred by the statute of limitations, as herein interpreted, and the Commission will not recognize the right of a carrier to waive the limitation provisions of the statute. \* \* \* The act went into effect August 28, 1906.

The Commission has also decided that charges above the lawful rate over the route the shipment moved can be refunded by the carrier or carriers without any order of the Commission, and under Administrative Ruling No. 70 of Tariff Circular 15-A it holds that the carrier may, in the cases therein indicated, refund all excess charges due to misrouting by its agent. The duty of the carrier is to charge and collect the lawful rate, no more and no less, and when more is collected, the excess should be refunded, and when less, the deficiency should be collected. In every case the cause of action accrues only when full payment of the lawful charge has been made.

In complaints for the recovery of damages caused by charges of rates unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, the cause of action accrues when the payment is made. In any other complaints for the recovery of damages for alleged violations of the interstate commerce laws of which this Commission has jurisdiction, the cause of action accrues when the carrier does the unlawful act or fails to do what the law requires, on account of which damages are claimed.

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No. 1747.  
IN THE MATTER OF JURISDICTION OVER WATER  
CARRIERS.

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*Submitted October 16, 1908. Decided January 7, 1909.*

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Carriers of interstate commerce by water are subject to the act to regulate commerce only in respect of traffic transported under a common control, management, or arrangement with a rail carrier, and in respect of traffic not so transported they are exempt from its provisions.

*E. G. Buckland; Maxwell Evarts; Aldis B. Browne; Cadwalader, Whitman & Mason; W. M. K. Olcott; Harvey D. Goulder; Alfred B. Thacher; D. H. Hayne; Sidney F. Andrews; Frank S. Masten; W. H. Pleasants; H. B. Walker, and E. H. Duff, representing Committee of Water Carriers.*

REPORT OF THE COMMISSION.

KNAPP, *Chairman*:

In Conference Rulings, Bulletin No. 2, under date of May 4, 1908, the following appears:

A steamboat line agreed upon a joint rate with a rail line for certain passenger and freight traffic. *Held*, That it could not unite with a railroad company in making a through route and joint rate on a particular traffic without subjecting all its interstate traffic to the provisions of the law and to the jurisdiction of the Commission.

Some time thereafter a committee representing a large number of water carriers operating coastwise, lake, and river lines petitioned the Commission to reconsider the ruling. This proceeding was thereupon instituted for the purpose of giving interested parties an opportunity to present their views upon the question as to how far water carriers are subject to the act to regulate commerce and the jurisdiction of the Commission, and counsel of various water lines were heard in argument on October 16. The question at issue may be stated as follows: Does the fact that a water carrier joins with a rail carrier in forming a through route or establishing a joint rate for the transportation of certain traffic subject all the interstate traffic of such water carrier to the requirements of the act and the jurisdiction of the Commission; or, stated in a narrower form, does such action on the part of a water carrier subject its port-to-port traffic to all the

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provisions of the act, including the posting and observing of tariffs and similar requirements?

This question arises because of the somewhat ambiguous language used in section 1 of the act, reading as follows:

That the provisions of this act shall apply \* \* \* to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment).

This provision of the law has not been changed since the original enactment of 1887, except that parentheses, as indicated in the foregoing quotation, were added by the amendment of 1906. The following rules of statutory construction are well settled: In the case of doubtful or ambiguous provisions, reference may be had to the history of the legislation, the evils sought to be corrected, and the remedy intended to be provided. If two constructions are permissible, one of which would lead to unjust or absurd results, and perhaps indicate that the provision is unconstitutional, while the other would be entirely practicable and within the constitutional power of the law-making body, the latter must be adopted. In *Lau Ow Bew v. United States*, 144 U. S., 47, the Supreme Court said:

Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention and, if possible, so as to avoid an unjust or an absurd conclusion.

In *United States v. Freight Association*, 166 U. S., 290-320, the court said:

While it is the duty of courts to ascertain the meaning of the legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words, whenever it is found necessary to do so in order to carry out the legislative intent.

In *Interstate Commerce Commission v. L. & N. R. R. Co.*, 73 Fed. Rep., 409-426, the court said:

The interstate-commerce act is not to be construed so as to abridge or take away the common-law right of the carrier to make contracts and adopt proper business methods further than its terms and recognized purposes require.

In *Texas & Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 197-218, the court said:

Moreover, it must not be overlooked that this legislation is experimental. Even in construing the terms of a statute, courts must take notice of the history of legislation and, out of different possible constructions, select and apply the one that best comports with the genius of our institutions, and therefore most likely to have been the construction intended by the lawmaking power. Commerce in its largest sense must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it and not to hamper or destroy it is naturally to be attributed to Congress.

In the same case the court also said :

It is also obvious that if the Commission does have the power, of its own motion, to promulgate general decrees or orders which thereby become rules of action to common carriers, such exercise of power must be confined to the obvious purposes and directions of the statute. Congress has not seen fit to grant legislative powers to the Commission.

Looking to the history of the enactment, and without attempting to quote the pertinent portions of the congressional debates and committee reports preceding the enactment of the law in 1887, there can be no doubt that the main purpose of the act was to regulate transportation by railroad; that the regulation of water lines was merely incidental and collateral, and was included in order that the regulation of railroads might be effective and not virtually nullified by arrangements between railroads and water lines. It is not necessary to recite the reasons which induced the legislation; it is sufficient to determine the intention of the law-making body.

As a fundamental proposition it is obvious that interstate commerce wholly by railroad is subject to the act and that interstate commerce wholly by water is not subject to the act. It is equally obvious that interstate commerce partly by railroad and partly by water, under a common control, management, or arrangement for a continuous carriage or shipment, is subject to the act. Does the fact that some of the commerce transported by a carrier is subject to the act *ipso facto* render all the commerce transported by that carrier subject to the act? The leading case in point is *Cincinnati, New Orleans & Texas Pacific Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 184. The substance of so much of that decision as relates to the present matter is stated in the syllabus, as follows:

When a state railroad company whose road lies within the limits of the state enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by a consolidation with the foreign companies, but by an arrangement for the continuous carriage or shipment from one state to another, and thus becomes amenable to the Federal act in respect to such interstate commerce; and, having thus subjected itself to the control of the Interstate Commerce Commission, it can not limit that control in respect to foreign traffic to certain points on its road to the exclusion of other points.

When goods shipped under a through bill of lading, or in any other way indicating a common control, management, or arrangement, from a point in one state to a point in another state are received in transit by a state common carrier, such carrier, if a railroad company, must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce.

When analyzed, practically all this case decided upon the point here involved is that the interstate transportation in question was subject to the act to regulate commerce by reason of the fact that,

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having entered into a common control, management, or arrangement for the through carriage of goods, a new line has been formed independent of its constituent elements, and that such new line can not discriminate as between different points. In this case the court took occasion to say:

It may be that if, in the present case, the goods of the James & Mayer Buggy Company had reached Atlanta, and there and then, for the first time, and independently of any existing arrangement with the railroad companies that had transported them thither, the Georgia Railroad Company was asked to transport them, whether to Augusta or to Social Circle, that company could undertake such transportation free from the control of any supervision except that of the state of Georgia.

\* \* \* \* \*

All we wish to be understood to hold is that when goods shipped under a through bill of lading from a point in one state to a point in another are received in transit by a state common carrier, under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the act to regulate commerce.

Traffic wholly within a state is not subject to the act, for the reason that Congress has no authority to regulate such traffic. Traffic wholly by water is not subject to the act, for the reason that Congress did not in that statute exercise its admitted authority over interstate transportation by water. The Commission's only duty is to execute the mandate of the Congress.

The language of the provision in question indicates its meaning. The act applies to any common carrier or carriers engaged in transportation partly by rail and partly by water *when* both are used under a common control, management, or arrangement for a continuous carriage or shipment. The use of the word "when" is significant, and its natural meaning seems to be that a water carrier is subject to the act "in so far as" or "to such extent as" it carries traffic under a common control, management, or arrangement with a railroad. It need hardly be stated that the act does not require publication of or adherence to rates upon purely intrastate traffic. With regard, then, to the history and purpose of the enactment, the language used and the rules of statutory construction which have been mentioned, it is difficult to see how serious doubt can arise that Congress did not intend to regulate the charges exacted upon the port-to-port business of water carriers; but, if further support of that position is necessary, it is amply found in the conditions under which port-to-port business is conducted. Without mentioning in detail the fundamental differences between the conditions under which the two classes of traffic are carried, it is scarcely open to question that enforcement of the Commission's ruling might force water carriers to withdraw either from their port-to-port business or

from their arrangements for through carriage in connection with railroads. If one water carrier by becoming a party to a joint rate with a railroad is thereby required to publish and adhere to its rates between ports, it could not hope to compete with a carrier which is not required to publish and maintain its rates, and the result would be that the actual operation of the law, instead of tending to promote and facilitate commerce, would tend rather to its injury by making unprofitable the instrumentalities provided for the carriage of that commerce. Under such a construction of the law there would exist the commercial anomaly of two water carriers between the same ports attempting to secure the transportation of competitive traffic, the one bound to observe and collect rates which it had published thirty days in advance, the other able to make any rate which would secure the traffic; one within the law and subject to severe penalties for its violation, the other without the law and governed only by its business interest. That the Congress intended to produce such a condition—to create in a commercial sense a favored class of water carriers not subject to the act—and penalize other water carriers for their attempt to facilitate commerce by joining in through routes with rail carriers, seems unreasonable and might well be held unconstitutional, as depriving the latter class of carriers of the equal protection of the law.

One further illustration points to the same conclusion. Under certain conditions the Commission is authorized to establish through routes and joint rates, and this provision applies where one of the carriers is a water line. Suppose that, upon proper showing, the Commission establishes a joint rail-and-water rate, say, from Rochester, N. Y., to the city of New York by rail and thence by water carrier to Norfolk, Va. Thereby, under the conference ruling, the entire traffic of the water carrier between New York and Norfolk becomes subject to the act, without any voluntary action on the part of that carrier and, indeed, against its protest. Having established one satisfactory through route between Rochester and Norfolk, the Commission is without authority to establish another, and therefore could not by similar means make the port-to-port traffic of competing carriers from New York to Norfolk subject to the act. The net result of the proceeding would be simply to injure and possibly destroy the business of the carrier required to join in the through rate, and this would come dangerously near to taking that carrier's property without due process of law.

It has been suggested that the ruling announced by the Commission furnishes the only means by which the Commission can enforce the provisions of the act against unlawful discrimination—that is to say, if the carrier's rail-and-water shipments are subject



to the act and its port-to-port shipments are not, the water carrier might join in a through rate to one interior point and refuse to join in a through rate to another interior point similarly situated, and by manipulation of its port-to-port rates unjustly discriminate in favor of the point to which no through rate applied. This objection seems more apparent than real. If the carriers make a joint rate or through route between two points, they form a new line independent of its constituent elements, and that through line, under the principle announced in *C. N. O. & T. P. Ry. v. I. C. C.*, *supra*, would certainly be prohibited from unjustly discriminating within the meaning of the statute. It does not seem difficult to remedy such a situation without requiring the water carrier to subject its port-to-port business to the requirements of the act, for the simple reason that the new through line is prohibited from unduly preferring any community in any respect whatsoever. Moreover, the rail carrier, in respect of such traffic, is undoubtedly subject to the act, and if it joined in such an arrangement would become with the water carrier a joint *tortfeasor* and subject to prosecution as such.

To hold otherwise amounts to this—that an interstate carrier by water must elect to bring all its business within the control of the Commission or relinquish all through business, freight or passenger, however profitable to the carrier or advantageous to the public. Opposed to this we have the plainly expressed intention of the Congress to exclude water carriage of every kind from the operation of the act and, by exception, to include it only in such cases as Congress thought necessary to effectually control and prevent abuses by rail carriers whose business was conducted in connection with the use of water transportation.

It is further suggested, if port-to-port traffic carried by a water line which also carries rail-and-water traffic is excluded from the operation of the act, that such rates might be allowed on port-to-port traffic to one who is also a shipper of rail-and-water traffic as to give to that shipper an advantage over competing shippers by rail and water. To state the proposition is to refute it. The granting of preferential rates on port-to-port traffic to influence rail and water traffic, amounting to a rebate on the latter, would bring the transaction clearly within the prohibitions of section 10 of the act and section 1 of the Elkins law. If port-to-port traffic should be subjected to the act because otherwise opportunity is afforded for wrongdoing in respect of rail-and-water rates, it would seem similarly needful to subject intrastate traffic which in respect of interstate rates affords corresponding opportunity. The question is not as to the character of the traffic, but whether *by any device* a favored shipper obtains transportation at less than the established rates, and it makes no difference

whether the unlawful result is accomplished by preferential rates on port-to-port traffic, on intrastate traffic, by a free pass or by the actual payment of money; in either case there is a violation of law for which a penalty is provided.

If it be true, as was said in *Texas & Pacific Ry. Co. v. Interstate Commerce Commission*, *supra*, that "an intention to promote and facilitate it [commerce] and not to hamper or destroy it is naturally to be attributed to Congress," it seems clear that the port-to-port business of water carriers is not within the purview of the statute. This construction gives workable effect to every provision of the act and is in harmony with its remedial purposes. It controls the all-rail and the part-rail-and-part-water transportation, which is the subject of "common arrangement," and leaves all other water carriage open to free competition. Upon further consideration we are constrained to adopt the view that water carriers are subject to the law only as to such traffic as is transported under a common control, management, or arrangement with a rail carrier, and that as to traffic not so transported they are exempt from its provisions. We do not undertake to say what relations or practices constitute or are evidence of common arrangement, for that question is not now presented. We merely hold that as to transportation which is not under common control, management or arrangement the act does not apply and the Commission is without jurisdiction.

The administrative ruling in question will be modified to conform to the views herein expressed.

COCKRELL, *Commissioner*, concurring:

In concurring in the foregoing opinion I submit the following:

The language of the act is—

That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment between interstate points.

Probably the first judicial construction given to the language "or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment" was by Judge Deady in the United States circuit court in Oregon in *Ex Parte Koehler, Receiver*, April 4, 1887, 30 Fed. Rep., 867, in these words:

So long as the railway and the steamer are each operated under a separate and distinct control, making its own rates and only bill for the carriage and safe delivery of the goods at the end of its own route, the act does not apply to the transportation. To make these carriers subject to the act, the railway and vessel must, as therein provided, be operated or used under a "common con-

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trol"—a control to which each is alike subject and by which rates are prescribed and bills of lading given for the carriage of goods over both routes as one.

The language of the act first quoted remained unchanged up to June 29, 1906, when, by the Hepburn Act, the words "or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment" were parenthesized, thus indicating the intention of Congress to be—

First. To apply the act to all railroad carriers, regardless of their number, on all interstate transportation.

Second. To apply the act to such interstate transportation partly by railroad and partly by water when, and only when, both the railroad and the water are used by the respective carriers under a common control, management, or arrangement for a continuous carriage or shipment. There was and is no necessity for a common control or management between railroads in interstate transportation. They are completely covered by the act and are required to publish rates, to establish through routes and joint rates, and to do all necessary things for a continuous carriage or shipment.

As to foreign commerce, exports and imports, the first section limits the jurisdiction to the transit from place of origin in the United States to the port of transshipment, and from the port of entry to destination either in the United States or an adjacent foreign country, thus confining the jurisdiction exclusively to the part of the transportation wholly within the United States. The Supreme Court of the United States in the case of *Armour Packing Co. v. United States*, 209 U. S., 78, uses this language:

There is no attempt in the language of this act to exempt such foreign commerce as is carried on a through bill of lading; on the contrary, the act in terms applies to the transportation of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment.

As to the coastwise, the river, and the lake commerce, the act applies only to such passengers and property as both the railroad and the water carriers engage in transporting partly by railroad and partly by water under a common control, management, or arrangement for a continuous carriage or shipment from and to such designated points as may be named in the tariffs of the railroad carriers concurred in by the water carriers or by the water carriers concurred in by the railroads. The law plainly says:

Every common carrier subject to this act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party.

No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act.

Congress has unrestricted "power to regulate commerce with foreign nations and between the states and with the Indian tribes." Why has it limited the jurisdiction of this Commission over foreign commerce to the transit of such commerce to and from ports of transshipment and ports of entry, and over coastwise, river, and lake commerce only when such commerce is transported partly by railroad and partly by water under a common control, management, or arrangement for a continuous carriage or shipment? The answer is that Congress began legislating for the control and regulation of foreign commerce and commerce wholly by water along our coast and on our rivers and lakes at the very first session of the first Congress held under the Constitution, and has ever since, from Congress to Congress, been enacting additional and amendatory legislation deemed necessary for the control and regulation of such commerce, and placed the enforcement of such laws under the Treasury Department up to February 14, 1903, when the control and regulation was transferred to the Department of Commerce and Labor, where it still remains, and has placed such common carriers wholly by water under the antitrust law, leaving them practically uncontrolled or unregulated only as to their rates, fares, and charges, and as to these they are subject to the common law and can only charge reasonable and just rates. In the discussion and passage of the interstate commerce law in 1887 mention was made of these water carriers, and also in the passage of the Hepburn Act they were in the minds of Congress, but yet Congress has not deemed it necessary or best to place them under this Commission. Transportation wholly by water is entirely different from transportation by railroad, or partly by railroad and partly by water. On our coastwise, river, and lake traffic the water is free and ample for all passengers and shippers to use their own vehicles for such transportation, just as on our roads or country highways; but in transportation wholly by railroad or partly by railroad and partly by water, passengers and shippers can not use their own vehicles or means of transportation.

CLARK, *Commissioner*, dissenting:

It is well and commonly known that from the very first the prime purpose of the act to regulate commerce was to prevent favoritism and unjust discrimination between localities and persons.

In attempting to reach that purpose by legislation affecting the railroads the Congress found it necessary to include within the provisions of the act carriers by water when used in connection with a

railroad "under a common control, management or arrangement for a continuous carriage or shipment."

The language of section 1 of the act does not seem ambiguous. It is: "That the provisions of this act shall apply \* \* \* to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management or arrangement)." Later, in the same paragraph, the Congress employed these words: "And also to the transportation in like manner of property shipped from any place in the United States to a foreign country," etc.

Note in the first instance the words "any common carrier or carriers," and in the second instance the words "to the transportation \* \* \* of property." It does not, therefore, seem strained or unreasonable to assume that if the Congress had intended that carriers by water should be amenable to the act only to the extent of the property actually transported under a joint arrangement with a rail carrier it would have so stated and made this provision of the act apply "to the transportation of persons and property" instead of "to any common carrier or carriers engaged in the transportation of passengers or property," partly by rail and partly by water, under a common control, management or arrangement for a continuous carriage or shipment.

As indicative of the legislative intent, Senator Cullom, who was in charge of the original bill, is quoted in Painter's Debates, Vol. I, p. 237, as saying:

The purpose of this provision in relation to water transportation is to so frame the section as that all American railroads, as well as those that run outside into Canada, shall have to come up to the provisions of the bill to some extent. There is no provision in this bill that at all interferes with water transportation unless it is operated under some arrangement with a railroad company or common carrier by rail by which it can take advantage of any other railroad that has no water connection at all.

It will be noted that the Senator's language is that no provision in the bill interferes with water transportation "unless" it is operated under some arrangement with a railroad company. He did not say "except in so far as" it is operated in connection with a railroad company.

Practically the same language was employed by the United States circuit court for the southern district of New York in *United States ex rel. Morrison v. New York & Texas Steamship Co.*, in which it was said:

Such a carrier is not within the intent or scope of language of the act to regulate commerce, unless, under some common control, management, or arrangement, it had engaged with a railroad company for a continuous carriage or shipment betwixt points designated in the act.

In *New York, New Haven & Hartford Railroad Company v. Interstate Commerce Commission*, 200 U. S., 361, it was said:

The interstate commerce act was enacted to secure equality of rates and to destroy favoritism, and for those purposes is a remedial statute, to be interpreted so as to reasonably accomplish them; its prohibitions against directly or indirectly charging less than published rates are all-embracing and applicable to every method by which the forbidden results could be brought about.

The well-established rule of judicial interpretation is that statutes must be construed in such manner as to carry out the legislative intent. Questions of expense and inconvenience resulting from the operation of a statute have all been considered and passed upon by the legislators, and are not for the executives to weigh. It is difficult to see how, under the construction placed upon the act by the majority of the Commission in this matter, the legislative intent to prevent unjust discriminations can be effected in so far as such discriminations are possible in connection with a water carrier. Vast quantities of freight are transported annually between the east and the west, partly by rail and partly by water, moving between eastern lake ports such as Buffalo and western lake ports such as Chicago and Duluth. Most of the boat lines engaged in this traffic on the Great Lakes are owned either by the rail carriers as such or by the same interests that own and control the rail carriers. If, for example, the Erie Railroad Company may accept freight at New York to be transported to Duluth by rail and water over the Erie rails to Buffalo and by Erie boat from Buffalo to Duluth under tariff rates and regulations which are duly published and filed and which it must observe, and may also take on its boat from Buffalo additional freight for the same shipper which has been forwarded to Buffalo over its rails as local shipments, and carry it from Buffalo to Duluth at any rate it sees fit to make, there appears to be but one answer to the question of how discrimination in favor of that shipper is to be prevented. What is to prevent special or secret water rates being applied to interstate shipments so reconsigned at Buffalo and becoming the agency through which the lawful tariff rates on the shipments that move on through rates, or even on all-rail rates, are departed or rebated from? Or what is to prevent the shipper with large tonnage from forwarding under such reconsignment such part of his tonnage as may be necessary to secure the port-to-port rates that he demands in order to produce the net result desired on all his tonnage?

It is not enough to say that devices through which the law is evaded are prohibited under pain of the penalties of the law. Publicity of rates and nondiscriminatory application of rates are the foundation and corner stone of the act. If all the rates are published and both carriers and shippers are bound thereby, no carrier and no

shipper is discriminated against, unless with intent, and there is no difficulty about proving the purpose or intent of deviation therefrom. If a part of the rates need not be published and carrier and shipper are as to those rates free to contract for transportation under any terms which they may agree upon and to move that traffic between the same points and in connection with the traffic of the same shipper which is moved under rates that by law are required to be published and observed, an effort to prove intent to evade the law on part of either carrier or shipper, or to fix responsibility or liability upon either of them for unlawful discrimination or for departure from, or evasion of, the intent of the law, or of the conditions which it undertakes to impose upon both carriers and shippers, will be idle and futile.

Under the view of the majority of the Commission the water carrier may transport traffic under an arrangement with a rail carrier for through shipment, and, on the same boat or on others of its boats, may grant free interstate transportation to shippers and other persons, unhampered by the antipass provisions of the first section of the act, and thus old methods of favoritism and discrimination may be revived and resorted to with impunity.

I am not able to agree with the view of the majority that "the use of the word 'when' is significant and that its natural meaning is that a water carrier is subject to the act only 'in so far as' or 'to such extent as' it carries traffic under a common control, management, or arrangement with a railroad." That interpretation appears strained and not one that would naturally suggest itself, or that ever has suggested itself, except for the purpose of reaching the view contended for by those of the water carriers that opposed the Commission's ruling.

The force of the analogy between a purely intrastate rail carrier and a water carrier that participates in interstate traffic under a common arrangement with a rail carrier is lost in view of the fact that the Congress specifically included as amenable to the act the water carrier so participating with a rail carrier in an arrangement for continuous carriage or shipment, and specifically excluded from the provisions of the act the transportation of passengers or property wholly within one state. If, as said in the majority report, traffic wholly within a state is not subject to the act, for the reason that Congress has no authority to regulate such traffic, there is all the more reason to believe that Congress fully intended to regulate all the traffic which it did have authority to regulate, excepting only transportation on the high seas between this country and foreign countries not adjacent.

It is true that enforcement of the Commission's original ruling of May 4, 1908, "might force water carriers to withdraw either from

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their port-to-port business or from their arrangements for through carriage in connection with railroads." It seems that that is exactly what the Congress intended they should do—either be amenable to the act or excluded from its terms; and inasmuch as the water carrier is left free to elect whether or not it will enter into any arrangement with a rail carrier, it is difficult to see how the act can be construed as having created "in a commercial sense a favored class of water carriers not subject to the act."

In section 1 of the act it is provided that "It shall be the duty of every carrier subject to the provisions of this act \* \* \* to establish through routes and just and reasonable rates applicable thereto." And in section 15 it is provided that "The Commission may also, after hearing on a complaint, establish through routes and joint rates \* \* \* when that may be necessary to give effect to any provisions of this act and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line." It seems clear that the duty to establish through routes is imposed only upon such carriers as are amenable to the terms of the act, and that the jurisdiction of the Commission in establishing through routes and joint rates is confined to carriers that are amenable to the act. It seems equally clear that the Commission has no power to force a water carrier to become a part of a through route and joint rate in connection with a rail carrier unless that water carrier has first voluntarily made itself amenable to the act by engaging in some arrangement with a rail carrier for through carriage or shipment, and by that action brought itself within the jurisdiction of the Commission in administration of the act.

An intention to hamper and destroy commerce is certainly not to be attributed to the Congress, but the Congress is to be credited with an intention to hamper and destroy special favors, unjust discrimination, and the secret exercise of a power to make or break individuals or localities.

The construction given to this provision of the act by the majority of the Commission affords an invitation to rail carriers to provide themselves with water connections owned or controlled by themselves and to use them as an agency through which to defeat the prime purpose of this legislation. It seems plain that the Congress intended to leave water carriers free to compete with each other and with rail carriers except when such water carriers see fit to enter into some common ownership, control, or arrangement for through carriage or shipment with a rail carrier, and that when a water carrier does enter into such an arrangement with a rail carrier it subjects all of



its interstate transportation to the requirements of the act to regulate commerce. This view is strengthened by the fact that it is apparently in harmony with the view adopted by some of the water carriers, both coastwise and on the Great Lakes. Several of them have filed with the Commission during the years 1907 and 1908 tariffs of their rates applying from port to port on interstate shipments. The correctness of the view of the majority of the Commission in this matter is not at all certain. It resolves all doubt against the jurisdiction of the act, and thereby divests the Commission of opportunity to seek in the courts judicial determination of the question. If the view expressed in the Commission's conference ruling of May 4, 1908, were adhered to, the opportunity for securing judicial determination, if that became necessary, would be preserved. For these reasons I am not able to agree with the majority opinion in this case.

I am authorized to say that Commissioner Clements and Commissioner Harlan unite in this dissent.

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No. 1301.

WASHINGTON BROOM & WOODENWARE COMPANY  
v.  
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

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*Submitted January 15, 1909. Decided February 1, 1909.*

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1. On the facts shown of record; *Held*, That the defendant alone was responsible for the misrouting of the shipment in question through a junction carrying a higher rate than was available through another junction, and must therefore bear the entire burden of the mistake; and that the connecting carriers participating in the movement, being without fault in the premises, can not be required to join in the payment of the damages to which the complainant is entitled.
2. The privileges embodied in a separate storage and reconsignment tariff issued by one carrier can not be availed of, or applied to movements, under a joint tariff to which that carrier and two others are named as parties, unless the latter tariff by express reference to the former so provides.

*C. J. Howard* for complainant.

*E. B. Peirce* for defendant.

REPORT OF THE COMMISSION.

**HARLAN**, *Commissioner*:

This complaint involves a demand for reparation on a carload of broom corn received by the petitioner during the fall of 1906 at Seattle, in the state of Washington. The case is submitted on the pleadings, which disclose a state of facts that requires us to hold that the claim is well founded and that reparation must be awarded as prayed in the petition. The only matter in doubt is whether the demand of the complaint shall be satisfied by the defendant alone or whether the Chicago, Burlington & Quincy Railroad Company and the Northern Pacific Railway Company, which have not been made defendants, but which participated in the movement, ought to be required to participate also in the payment of the damages which the complainant is entitled to recover.

The history of the movement is as follows: The shipment was received by the Rock Island at Duncan, in Oklahoma territory, on September 7, 1906, and was hauled by it under local billing to Wichita, in the state of Kansas. On September 14, after the arrival of the car at Wichita, the consignee at that point reconsigned

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the shipment to Seattle to its own order, "notify the Washington Broom & Woodenware Company," the complainant herein. This movement was on new billing from Wichita. Instead of delivering the car to the Burlington at Beatrice, in the state of Nebraska, which is the usual junction for the interchange of traffic originating at Wichita, and thus giving the shipment the benefit of the published joint through rate of \$1.25 per 100 pounds in effect from Wichita to Seattle over that route, the Rock Island hauled the car to St. Joseph and there turned it over to the Burlington. Over this route there was no joint through rate in effect, and the charges from Wichita were therefore collected from the complainant at Seattle at the rate of \$1.57½ per 100 pounds, being the sum of the local rates into and out of St. Joseph. The difference in the rates applicable through the two junctions is what the complainant seeks in this proceeding to recover from the Rock Island, on the ground that it negligently routed the shipment through St. Joseph instead of sending it through Beatrice. It demands the application of the rate of \$1.25 in force from Wichita to Seattle over the Beatrice route.

The defendant admits that the complainant must be awarded the damages that it demands, but it contends that the shipment was a through movement from Duncan; that the charges ought properly to be adjusted on the basis of the joint through rate of \$1.25 then in effect from Duncan to Seattle via St. Joseph; and that the three carriers participating in the movement ought to join in refunding the overcharge. That view, however, does not seem to be sustained by tariff authority. So far as we can learn from the joint tariff of the three companies, the rate of \$1.25 on broom corn from Duncan to Seattle was intended to apply only on through shipments. The tariff does not contemplate nor does it provide that a shipment of broom corn may move on the local rate into Wichita, and after being stopped and stored there, may later be reconsigned through St. Joseph on the balance of the joint through rate from Duncan to Seattle. The tariff in which the joint rate through St. Joseph is named contains no indication that any stopping or storage or reconsigning at Wichita was contemplated or would be allowed.

The Rock Island issues a separate "storage and reconsigning" tariff, under its own name and on its sole authority, in which Wichita, among other points, is designated as a concentrating point for broom corn. Under this tariff broom corn from Duncan and other points in Oklahoma may move to Wichita on the local rates and have free storage there for a period not exceeding one year, during which time it may be reconsigned to final destination under a tariff rule providing that upon the surrender of the freight bills showing the payment of the local rates into Wichita the inbound local charges will be refunded "down to the difference in the rate from point of

origin to destination and rate from concentrating point to destination plus 5 cents per 100 pounds."

The record shows that the defendant handled the shipment under this tariff. It received the car at Duncan as a local movement on which it collected the local rate to Wichita. The shipment went into Wichita weighing 19,628 pounds. It went out of Wichita weighing only 18,300 pounds, showing an unloading or substitution or other breaking of bulk at that point. On the new bill of lading issued by the defendant at Wichita under the order to reconsign the car to Seattle, and also upon the waybill, the defendant noted \$17.66 as "advances," that being the amount resulting from the shrinking of the local rate into Wichita under the reconsigning rule above quoted. All this was done under tariff authority contemplating a local movement from Wichita to Seattle through Beatrice. Nothing of the kind was permissible, as we construe the tariffs, in the case of a through movement from Duncan under the joint through rate via St. Joseph, to which we have alluded.

In other words, the defendant, under the order reconsigning the car to Seattle, ought to have forwarded the shipment through Beatrice, and is solely liable to the complainant for its negligence in forwarding it from Wichita via another junction through which a higher rate was in effect. In this negligence the two connecting lines in nowise participated and neither may lawfully participate in the payment of complainant's claim. The defendant alone must bear the burden of its mistake; for it is our understanding that the provisions of the storage and reconsigning tariff of the Rock Island, to which neither the Burlington nor the Northern Pacific is named as a party, can not be applied to through movements under the joint tariff of the three companies unless the latter tariff by express reference to the former so provides. Moreover, the reconsigning tariff does not provide for the application of its privileges to through movements or for the application of through rates, but merely for a refund, on a prescribed basis, of a certain portion of the local rate into Wichita when the shipment is afterwards reconsigned.

We find that the complainant is entitled to recover the sum of \$77.13 from the defendant on account of its negligence in misrouting the shipment and in proper readjustment of the charges actually collected. That amount includes the "advances" of \$17.66 heretofore referred to, and which were improperly added to the freight charges collected at destination; and also the sum of \$59.47, being the difference between the charges on 18,300 pounds collected under the rate over the route of the actual movement, and the charges that would have been assessed as herein explained had the shipment moved over the other and cheaper route.

An order will be entered in accordance herewith.

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No. 1745.

BARTON, REISINGER, DAVIS COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY.

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*Submitted January 21, 1909. Decided February 1, 1909.*

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On the facts shown of record, *Held* that a rate of 20 cents per 100 pounds on uncompressed cotton from Vincent, Ark., to Memphis, Tenn., a distance of 15 miles, is unreasonable and ought not for the future to exceed 15 cents per 100 pounds. On that basis reparation is awarded on all shipments made by the complainant since September 1, 1907, at which time the defendant canceled a rate of 12 cents per 100 pounds that had been in effect for some years.

*Moyers & Consaul* and *S. V. Neely* for complainant.

*Martin L. Clardy, James C. Jeffery, and B. M. Flippin* for defendant.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The town of Vincent, in the state of Arkansas, is an inland point a few miles west of the Mississippi River, and is distant only 15 miles from Memphis, on the east bank of the river, in the state of Tennessee. Being naturally tributary to Memphis, cotton from the adjacent countryside for many years has moved to that market. During the season of 1907 the cotton crop of the locality amounted to about 2,600 bales, practically all of which was shipped to Memphis over the rails of the defendant, Vincent being a local station on that line.

For six or seven years prior to October 1, 1907, and possibly longer, the defendant had maintained a rate of 12 cents per 100 pounds on uncompressed cotton from Vincent into Memphis. Out of this rate it paid an arbitrary of 2 cents per 100 pounds to the company owning the bridge over which the defendant's rails cross the river. It had been its practice also, at its own expense, to deliver the cotton at the public cotton sheds in the city of Memphis. In other words, it absorbed the cost of draying the cotton from its Memphis terminals to

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the sheds. This amounted to 3 cents per 100 pounds, or  $17\frac{1}{2}$  cents per bale of 535 pounds. After deducting these two items there remained 7 cents per 100 pounds as the net earnings of the defendant on the Vincent cotton traffic.

On October 1, 1907, the defendant increased the rate on cotton from Vincent to Memphis to 25 cents per 100 pounds. While it continued to absorb the bridge arbitrary, its tariffs did not provide for the continued absorption of the cost of the drayage. Its net revenue under the new rate amounted, therefore, to 23 cents per 100 pounds, or more than three times its net revenue under the prior rate of 12 cents, which it had so long maintained. But experience, as it now admits, demonstrated to the defendant that the new rate of 25 cents was excessive, and it offers, if so authorized by the Commission, to make reparation to the complainant on all shipments that moved under that rate, the reparation to be adjusted on the basis of the rate of 20 cents per 100 pounds, which was made effective by the defendant on September 1, 1908, and is the rate now in effect between the points in question.

The complainant company, which is a buyer and shipper of cotton at Vincent, contends that the 20-cent rate is an unreasonably high charge for hauling cotton from that point into Memphis. It therefore demands the restoration of the former rate of 12 cents and prays for an award of reparation on that basis on all shipments made by it under the subsequent higher rates. Under the present rate, as under the previous rate of 25 cents, the defendant still absorbs the bridge arbitrary of 2 cents per 100 pounds, but it does not absorb the cost of draying the cotton to the sheds. Its net earnings, therefore, are 18 cents per 100 pounds, or more than two and one-half times its net earnings under the former 12-cent rate.

The complainant rests its attack on the ground (a) that the defendant had voluntarily contented itself for many years with the 12-cent rate, (b) that a presumption arises from that course of action that the former rate was reasonably compensatory, and (c) that other carriers from other points adjacent to Memphis are maintaining rates on cotton lower than the rates of the defendant from Vincent.

It will not be necessary to analyze the testimony at length. The Louisville & Nashville, the Southern, and the Nashville, Chattanooga & St. Louis all maintain much lower rates into Memphis from adjacent points east of Memphis than the rate of the defendant of which complaint is made. The Louisville & Nashville publishes a rate of 7 cents per 100 pounds from Brunswick, 22 miles distant, which is also applicable from the three or four points that are intermediate. The Southern Railway publishes a rate of  $47\frac{1}{2}$  cents a bale from Germantown, 15 miles, and  $57\frac{1}{2}$  cents a bale from Bailey, 21 miles east

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of Memphis, as compared to the 20-cent rate of the defendant from Vincent to Memphis, 15 miles, which makes a rate of \$1.07 per bale.

Other low rates from points east and south of Memphis are referred to in the record, but they are said by the defendant to have been published by the carriers to meet the competition of wagons, which haul the cotton into Memphis over the country roads from nearby points. Much cotton is brought into Memphis in that way from Tennessee points, and it is claimed that the carriers have put in the low rates referred to in order to save the traffic for themselves. Because of the intervening river, no such competition exists from cotton-shipping stations west of the Mississippi River in Arkansas, although shippers at river points and at some inland points, within a reasonable wagon haul to the river, seem to get lower rates by boat than by rail. Vincent is 14 miles from the river, and this makes a rather long haul by wagon, although it is said that the complainant can better afford to haul his cotton by wagon to the river and thence reach Memphis by boat than to pay the rates now demanded by the defendant.

The defendant, in support of the reasonableness of the 20-cent rate, calls attention to the fact that the rate is a less-than-carload rate; that it has to bear the burden of loading and unloading the cotton; that it is compelled to carry insurance in its own protection; that it has been subjected to very large claims for damages; and that besides the risk of fire there is also the risk of injury to the cotton by dampness, for which the railroads are usually held responsible because of the difficulty always encountered in the effort to prove that it occurred before the cotton was delivered to them for shipment. The defendant also justifies its rate in comparison with lower rates via other lines on the ground that it relinquishes the cotton at Memphis—that is to say, although it brings into Memphis about 80,000 bales a year it gets very little of the outward movement, its total outbound traffic during the last year amounting to 50 bales only. Its total earnings are represented, therefore, in the inbound rate, while the inbound rate represents only a part of the earnings of the other lines which participate heavily in the outbound movement. And finally, the defendant justifies its rate by saying that during the summer of 1908, before they were put into effect, the matter of its cotton rates was the subject of a conference with the Memphis Freight Bureau, and its schedule was readjusted in accordance with the understanding then reached. The representative of the bureau, who was present at the hearing and was called as a witness by the Commission, admitted that an agreement was reached at that conference, but he denied that it could fairly be said that the rates from these more adjacent points were accepted as satisfactory by the bureau. On the contrary, his personal view was that the rate from Vincent was too high.

Upon a review of the whole record, and from a careful examination of our tariff files and of such other information as has come to our attention, we think, and so find, that the rate of 20 cents per 100 pounds from Vincent into Memphis is now and, at the time the complainant's shipments were made, was excessive and unreasonable. In our judgment 15 cents per 100 pounds would have been and would now be a reasonable rate from Vincent. Deducting the bridge arbitrary of 2 cents per 100 pounds, this will leave to the defendant company net earnings of 13 cents per 100 pounds, or almost twice the amount of its net earnings under the former 12-cent rate. The proposed rate compares favorably with the present rates from adjacent points on the Frisco into Memphis. Marion, for example, is 11 miles distant and takes a rate of 10 cents; Jericho, 16 miles distant, enjoys a rate of 12 cents; Clarkdale, distant 17 miles from Memphis, takes a rate of 16 cents. These points are west of the river. Edmondson, on the Rock Island in Arkansas, is 16 miles from Memphis. Cotton from that point takes a rate of 15 cents per 100 pounds. Nesbit, on the Illinois Central in the state of Mississippi, is 18 miles away, but takes a rate of 15 cents; this, however, includes drayage to the cotton sheds. Glover, in the same state, on the line of the Yazoo & Mississippi Valley, 18 miles distant, takes a rate of 14 cents, the carrier absorbing the cost of drayage to the cotton sheds in Memphis. While some of these rates may to a slight extent be affected by water competition, nevertheless, taking the rate situation as a whole, we think that they afford a fair basis for testing the reasonableness of the rate of the defendant which is here under consideration, and justify us in fixing a rate for the future on the basis above indicated.

We find that between November 8, 1907, and May 25, 1908, the complainant shipped into Memphis from Vincent 666 bales of cotton, upon which it is entitled to reparation, with interest at the rate of 6 per cent per annum, on the basis of the 15-cent rate which we now fix as the reasonable rate. But as there are not sufficient details in the record to enable us to ascertain with exactness the amount of reparation to which the complainant is entitled, no definite order with respect to reparation can now be entered. The parties to the complaint ought to have no difficulty in arriving at the amount and notifying the Commission, so that a proper order may be entered. For the present our action will be limited to fixing a reasonable rate for the future.

Let an order be entered accordingly.



No. 1548.

E. D. JONES &amp; SONS COMPANY

v.

BOSTON &amp; ALBANY RAILROAD COMPANY ET AL.

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Submitted November 27, 1908. Decided February 2, 1909.

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Defendants' rate of 36.32 cents per 100 pounds for the transportation of paper-mill machinery in carloads from Pittsfield, Mass., to Millinocket, Me., found unreasonable and unjust to the extent that it exceeds 23 cents per 100 pounds. Reparation awarded on that basis, and defendants required to maintain the lower rate for a period of two years.

*Wallace E. Bardwell* for complainant.

*Edgar H. Boles* for Boston & Albany Railroad Company.

*Edgar J. Rich* for Boston & Maine Railroad and Maine Central Railroad Company.

\**George E. Wicks* for Bangor & Aroostook Railroad Company.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

On various dates between January 29 and March 25, 1907, complainant shipped over defendants' lines 5 carloads of paper-mill machinery, aggregating 192,900 pounds, from Pittsfield, Mass., to Millinocket, Me., upon which were collected at the then existing rate of 36.32 cents per 100 pounds, aggregate charges of \$700.61. Effective October 28, 1907, a rate of 23 cents per 100 pounds, carloads, minimum weight 30,000 pounds, was established from Pittsfield to Millinocket, via East Somerville, Mass., Boston & Maine Railroad, Portland, Me., Maine Central Railroad Company and Boston & Albany Railroad, in connection with Bangor & Aroostook Railroad, which is still in effect. The complaint alleged that the rate exacted was unreasonable and unjust to the extent that it exceeded 23 cents per 100 pounds. The defendants admit this allegation, and it was shown that an effort made prior to these shipments to establish the last named through rate was rendered ineffective because of the omission from the tariff carrying this rate of one of the many carriers

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in the through line. At the hearing defendants signified their willingness to make the reparation claimed, amounting to \$256.94 on the aggregate weight.

The Commission is of the opinion that the rate of 36.32 cents per 100 pounds collected was unreasonable and unjust to the extent that it exceeded 23 cents per 100 pounds, and that claimant is entitled to reparation from defendants in the sum claimed. The Commission is further of opinion that the maximum rate for a period of two years should not exceed 23 cents per 100 pounds. An order will be entered accordingly.

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No. 1646.

SAM WILLIAMSON

v.

OREGON SHORT LINE RAILROAD COMPANY ET AL.

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*Submitted January 26, 1909. Decided February 1, 1909.*

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In view of the former practice of the defendant carriers in that behalf, the through rate on wheat from Idaho Falls, Idaho, to McKinney, Tex., must be held applicable, under Special Circular No. 6 of the Commission's tariff department, to a carload shipment to McKinney which moved on July 17, 1907, from Wooley's Spur, an intermediate point from which no specific through rate had been published. Reparation is awarded on that basis.

*Sam Williamson* for complainant in person.

*P. L. Williams* for Oregon Short Line Railroad Company.

*F. C. Dillard* and *N. H. Loomis* for Union Pacific Railroad Company.

*James Hagerman* and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company.

## REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The object of this petition, filed by a grain dealer with offices at Salt Lake City, is to secure reparation in the amount of \$116.96 on account of excessive freight charges collected on a carload of wheat shipped on July 17, 1907, from Wooley's Spur, in the state of Idaho, over the Oregon Short Line Railroad Company in connection with the Union Pacific Railroad Company and the Missouri, Kansas & Texas Railway Company to McKinney in the state of Texas. The weight of the shipment was 41,040 pounds, and the freight charges were assessed at a through rate of 88½ cents, obtained by combining the rate of 50 cents per 100 pounds, in force between Wooley's Spur and Junction City, and the published rate of 38½ cents from Junction City to McKinney. There was then in effect a joint through rate of 60 cents per 100 pounds on wheat passing over the same route from Idaho Falls to McKinney, between which Wooley's Spur is directly intermediate; and the answers of the defendant companies indicate that it had been their custom to apply the through rate from intermediate points from which no specific through rate was published.

15 I. C. C. Rep.

In principle the case seems to be controlled by the general ruling of the Commission announced in Special Circular No. 6, of its tariff department. In that ruling the Commission reiterated the well-established principle that the rates and fares of interstate carriers as well as their application must be so published as to be affirmative and definite in form, and free from uncertainty and ambiguity; but in recognition of the fact that many tariffs on file before May 1, 1907, contained long and short haul clauses, maxima rules, alternative rate or fare provisions, and other rules tending to make the application of rates and fares uncertain, and more particularly as to intermediate stations not specified in the tariffs; in recognition also of the great labor involved in the reformation of old tariffs so as to conform to the Commission's requirements; and in order to avoid hardships to shippers or passengers at intermediate stations that might otherwise be left without the rates and fares which they had theretofore enjoyed, it was held that carriers might until July 1, 1908, continue the use and application of tariffs which were issued prior to January 15, 1908, and contained rules of the character above referred to, or under which, without specific provision in the tariff therefor, the rates or fares had been applied at intermediate stations. The force of this ruling was subsequently extended to October 1, 1908, at which date it expired of its own limitation. It must now be understood by shippers and carriers alike that all shipments moving after October 1, 1908, must take the specific rates and fares provided in tariffs, whether published before January 15, 1908, or subsequent thereto, regardless of any long and short haul clauses, maxima rules, alternative rate or fare provisions, and rules of a similar import which they may contain.

This complaint presents an instance of a hardship upon a shipper that would arise from the strict application to an old tariff of the rules that are now in force with respect to tariffs issued after January 15, 1908, and therefore involves the very condition that the ruling in Special Circular No. 6 was intended to relieve. Under the authority of that ruling and upon the foregoing facts we find that the complainant is entitled to reparation in the sum of \$116.96, being the difference between the rate paid by him and the through rate which was properly applicable, together with interest on that amount at the rate of 6 per cent per annum from the date on which the excessive charges were collected.

It will be so ordered.

15 I. C. C. Rep.

No. 1426.

F. KEICH MANUFACTURING COMPANY

v.

ST. LOUIS &amp; SAN FRANCISCO RAILROAD COMPANY.

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*Submitted December 24, 1908. Decided February 1, 1909.*

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Reparation awarded complainant for excessive charge erroneously collected by defendant on 1 carload of shingles shipped from Lake City, Ark., to Springfield, Mo.

*C. W. Durbin* for complainant.

*E. B. Peirce* and *M. L. Bell* for defendant.

#### REPORT OF THE COMMISSION.

##### *HARLAN, Commissioner:*

The Memphis branch of the Frisco System passes successively through Marked Tree and Nettleton, in the state of Arkansas, to Koshkonong, and thence to Springfield, in the state of Missouri, so that traffic from Marked Tree to Springfield, a distance of 245 miles, passes directly through Nettleton and Koshkonong, which are local stations 93 miles apart. The defendant, while demanding under its published tariffs a rate of only 10½ cents per 100 pounds for hauling lumber from Marked Tree to Springfield, maintains at the same time a rate of 16 cents per 100 pounds for the transportation of the same commodity over the same rails and in the same direction from Nettleton to Koshkonong, which involves a materially shorter haul. The complaint is based on this alleged violation of the fourth section of the act, and the special purpose in filing it was to secure reparation on a single carload shipment of shingles that is alleged to have moved between the intermediate points in September, 1907.

Neither the claimant nor any witness in its behalf appeared at the hearing, but its attorney introduced in evidence the defendant's receipt showing the payment of freight charges on the basis of the rate complained of and then rested his case upon the presumption of unreasonableness that arises under such circumstances from the terms of section 4 of the act. The defendant, assuming the burden of proof, offered testimony tending to establish the following facts:

15 I. C. C. Rep.

Springfield is a place of about 30,000 inhabitants, and is a rather extensive market for hard wood. Koshkonong is a place of about 800 inhabitants, fruit being the only traffic that it originates in any substantial volume. It is strictly a local station and any lumber sent there is for local consumption. Springfield on the other hand is reached by other carriers as well as by the defendant, and a large percentage of the lumber that arrives there is manufactured into doors, sash, blinds, etc., and then reshipped. Lumber coming from Marked Tree to Springfield is principally hard wood, for which there is little local demand, and the rate to Springfield was established at 10½ cents so that the lumber might be manufactured there and reshipped as a finished product in successful competition with lumber manufactured from raw material shipped from the large lumber-producing territories in southern, eastern, and western Arkansas. The Fort Smith lumber district in western Arkansas is in close proximity to Springfield and at a much shorter distance than Marked Tree. The defendant's testimony was that the rates into Springfield are established by the rates from this adjacent district and that it is compelled to so adjust its own rates as to enable lumber from Marked Tree and other points in eastern Arkansas to compete with the lumber from the Fort Smith district. In other words, while there is no actual competition between the defendant and any other carriers in the transportation of lumber from Marked Tree to Springfield, it was claimed at the hearing that there was an active competition between the different producing territories in supplying the demand at Springfield; and on that ground the defendant attempted to justify its rate adjustment of which complaint is made.

This was the theory upon which the case was presented, but the subsequent investigations of the Commission show that both parties were laboring under a misapprehension as to the facts. There are no rates to Springfield from the Fort Smith lumber district that require, as a competitive proposition, the defendant's 10½-cent rate from Marked Tree to Springfield; and the rates that were referred to by the defendant in that connection are rates established by itself over one of its own branch lines, and are not rates established by a competing line. Moreover, the shipment in question did not originate at Nettleton, but at Lake City, a point on the Jonesboro, Lake City & Eastern Railroad.

There was no joint through rate on shingles from Lake City to Koshkonong and the charges were collected by the defendant by advancing at the junction at Nettleton the local charges of its connection, assessed at the sum of \$15 and erroneously based on a supposed rate of 5 cents per 100 pounds instead of 6 cents as required by its published tariffs; and by adding to the advanced charges

its own local rate erroneously assessed at 17 cents per 100 pounds instead of 16 cents as provided by its published tariffs. But it now appears that the defendant had published and that there was then in effect a joint through rate on shingles from Lake City to Springfield of 17 cents per 100 pounds, which under the practice then existing could have been applied as a maximum rate on this shipment to Koshkonong as an intermediate point to Springfield. This rate may now serve as a basis for the adjustment of the complainant's claim under the authority of Rule 83 of Tariff Circular 15-A, issued by the tariff department of the Commission, and also under the authority of Special Circular No. 6, the effect and operation of which is more fully explained in *Williamson v. Oregon Short Line R. R. Co.*, *ante*, p. 228. Unless there has been some further error or undercharge in connection with the shipment, we find that the complainant is entitled to reparation in the sum of \$15, being the excess charges at the rate of 5 cents per 100 pounds on the 30,000 pounds of shingles in the shipment, together with interest on that amount from September 28, 1907, at the rate of 6 per cent per annum.

An order to that effect will be entered.

15 I. C. C. Rep.

No. 1635.

UNITED STATES

v.

NEW YORK, PHILADELPHIA & NORFOLK RAILROAD  
COMPANY ET AL.

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Submitted December 5, 1908. Decided February 2, 1909.

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Defendants' rates of 57 cents and \$1.30 per 100 pounds for the transportation of ball cartridges and saluting powder, respectively, from Norfolk, Va., to Annapolis, Md., found unreasonable and unjust to the extent that they exceed 36 cents per 100 pounds on ball cartridges and 74 cents per 100 pounds on saluting powder. Reparation awarded on that basis, and defendants required to maintain the lower rates for a period of two years.

*J. E. Pillsbury* for complainant.

*Henry Wolf Bikle, George Stuart Patterson, and George V. Massey* for defendants.

## REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

On or about August 5, 1907, complainant shipped 6,723 pounds of ball cartridges and 1,370 pounds of saluting powder, aggregating 8,093 pounds, from Norfolk, Va., to Annapolis, Md., upon which were collected at the then existing rates of 57 cents and \$1.30 per 100 pounds, respectively, an aggregate of \$56.13. Subsequent to the filing of this complaint and assignment thereof for hearing, rates of 74 cents per 100 pounds on powder and of 36 cents per 100 pounds on ball cartridges were established from Norfolk to Annapolis, these rates being still in effect.

The petition alleged that the rates exacted were unreasonable and unjust to the extent that they exceeded these latter amounts. Defendants in their answers denied the unreasonableness of the rates exacted, but upon further consideration subsequently admitted that the rates charged were unreasonable and unjust as alleged by complainant, and signified their willingness to make reparation in the sum of \$21.79, this representing the difference between the charges collected and what would have been the charges if based upon the rates subsequently established and now in effect. It is the opinion

15 I. C. C. Rep.



of the Commission that the rates exacted upon these shipments were unreasonable and unjust to the extent that they exceeded 74 cents per 100 pounds on saluting powder and 36 cents per 100 pounds on ball cartridges, and that by reason of the premises claimant is entitled to reparation from defendants in the sum of \$21.79. It is the further opinion of the Commission that the rates now in effect should not be exceeded as the maximum rates for a period of two years. An order to this effect will be entered.

15 I. C. C. Rep.

No. 1613.

KILE &amp; MORGAN COMPANY

v.

DEEPWATER RAILWAY COMPANY ET AL.

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*Submitted December 12, 1908. Decided February 2, 1909.*

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1. Through failure of the Chesapeake & Ohio Railway to forward carload of lumber consigned to New Haven via Harlem River, as specifically routed by shipper, complainant was deprived of alleged privilege of reconsignment without extra charge offered by the New York, New Haven & Hartford Railroad at the Harlem River. On claim for reparation for expense of local haul from New Haven to Nashua, N. H., the point to which shipment would have been reconsigned had misrouting not occurred; *Held*, That since provision therefor was not filed with the Commission this reconsigning practice can not afford basis for reparation.
2. A cause of action accrues under the act to regulate commerce on the date freight charges are paid.
3. All claims, whether arising prior or subsequent to August 28, 1906, effective date of the act, are entitled to two years for presentation to the Commission, the one year proviso applying only to claims that accrued more than two years prior to that date. *Nicola, Stone & Myers v. Louisville & Nashville R. R. Co. et al.* followed.
4. A shipper can not be deprived through a carrier's negligence of any lawful privilege offered by another carrier, but such privilege must itself be not only one which the carrier may lawfully allow, but it must also be duly established and filed with the Commission.
5. Reconsigning rules required to be signed by shipper and subject to cancellation at the option of the carrier are inconsistent with the law governing the establishment and modification of tariff schedules.

*Rufus B. Sprague* for complainant.

*F. A. Farnham* for New York, New Haven & Hartford Railroad Company and Chesapeake & Ohio Railway Company.

*Edgar J. Rich* for Boston & Maine Railroad.

*Brown, Jackson & Knight* for Deepwater Railway Company.

*L. J. Hackney* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

*Edgar H. Boles* and *Clyde Brown* for New York Central & Hudson River Railroad Company and West Shore Railroad Company.

*Frank B. Carpenter* for New York, Chicago & St. Louis Railroad Company.

15 I. C. C. Rep.

## REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant shipped on May 26, 1906, a carload of lumber from Harper, W. Va., consigned to New Haven, Conn., specifically routing same via Star Union Line and the Harlem River, which routing if conformed to would have caused the shipment to reach the New York, New Haven & Hartford line at the Harlem River. Upon receipt of car from initial carrier (Deepwater Railway) by the Chesapeake & Ohio Railway Company at Deep Water, W. Va., the agent of that company forwarded shipment via Cincinnati and the White Line, thereby causing same to reach New Haven without going by way of the Harlem River. It appears that complainant had issued instructions to the agent of the New York, New Haven & Hartford Railroad at New York to divert this car to Nashua, N. H., under an arrangement with that carrier whereby shipment could without extra charge be reconsigned at the Harlem River to any New England point taking the Boston rate from point of origin. Through this disregard by the Chesapeake & Ohio Railway of the shipper's routing instructions the shipment was carried to New Haven, necessitating an additional local charge of \$57.85 to make desired delivery at Nashua. Reparation is asked in this amount. The rate from Harper to both New Haven and Nashua was the same via either route.

The Chesapeake & Ohio Railway, assuming the burden of defense, fully admits misrouting the shipment, as stated, but pleads application of same rate to New Haven via either route, and denies responsibility for any damage growing out of the haul from that point to Nashua, not being a party to a through tariff from Harper embodying this reconsignment privilege and having no knowledge thereof, and further denies liability on the ground that one guilty of negligence should be held responsible for such consequences only as can be foreseen or reasonably anticipated. This defendant also pleads the statute of limitations and asserts that the cause of action accrued on date of misrouting, or, if this view be erroneous, on the date delivery was made and liability for tariff charges attached, although the charges were not collected until a later date.

We can not accept this latter suggestion. The wrong here complained of grows out of the alleged exaction of excessive freight charges, and while flowing from a carrier's negligence, the wrong is not complete until complainant has been deprived of an amount above the lawful charge for the transportation via the proper route. Adhering to previous views of the Commission, we hold the cause of action to have accrued on July 10, 1906, date on which freight charges were paid. This leads to consideration of the limitation plea.

15 I. C. C. Rep.

Under the Commission's interpretation of the statute all claims, whether arising prior or subsequent to August 28, 1906, the effective date of the act, are entitled to two years for presentation to the Commission, the one-year proviso applying only to claims that accrued more than two years prior to that date. *Nicola, Stone & Myers v. Louisville & Nashville R. R. Co. et al.*, 14 I. C. C. Rep., 199. The petition in this proceeding having been filed with the Commission June 23, 1908, we think there exists no question of jurisdiction.

The remaining question goes to the validity of the reconsigning practice of the New York, New Haven & Hartford Railroad here in question, which, if not legally established, can not afford a basis for reparation. It was stated in behalf of complainant at the hearing that there was an arrangement between complainant and the New York, New Haven & Hartford line at the time this shipment moved for reconsignment at the Harlem River and the holding of cars there for that purpose, and this practice was also admitted by the representative of that carrier to have then existed. No tariff authority, however, for this practice at that time by the New York, New Haven & Hartford was definitely pointed out at the hearing, and upon our request to this company for a statement of such authority we have received the following from its counsel: "On investigation I find that the first I. C. C. tariff that we had in effect covering that privilege became effective July 1, 1906." An examination of our tariff files shows no such authority by this company at the time this shipment moved.

A copy of a circular issued by this company, not filed with the Commission, but purporting to authorize such reconsignments as to shipments of "grain, flour, feed, hay, etc.," lumber not being mentioned therein, has been presented in this case by the carrier last mentioned as the only arrangement for the practice that could apply to this shipment. This circular appears to have been more in the nature of a private contract between the New York, New Haven & Hartford and the individual shipper. It was required to be signed by the shipper, and was subject to cancellation at the option of the carrier as shown in the following quotation therefrom:

10. \* \* \* If you accept the above, please note below the point to which you will have your business consigned when you wish it held for diversion, and sign full name and date below. Upon receipt of rules and regulations, properly signed, etc., we will add your name to our holding and diverting list, and do everything in our power to render prompt and accurate service, and take pleasure in giving attention to such other requests as you may make.

11. This arrangement cancels all previous arrangements and is subject to cancellation at the option of the N. Y., N. H. & H. R.

Clearly this circular was not a lawfully established tariff. Even if it had been filed with the Commission the provision thereof for  
15 I. C. C. Rep.

cancellation of the same at the option of the carrier and that requiring the signature of the shipper in order that he might avail himself of the privileges of the circular were manifestly inconsistent with the law governing the establishment and modification of tariff schedules, which must be available to all.

Subsequent to the movement of this shipment this carrier filed with the Commission a circular substantially similar to the one above referred to, containing slight modifications, but open to the same objections, and which was without a statement as to the effective date thereof. Even if this latter paper could be recognized as a lawful tariff, which can not for a moment be admitted, it could have no application to this shipment.

Carriers at fault in misrouting are liable for damages represented by higher charges than would have been lawfully assessable had the misrouting not occurred, and we do not adopt defendant's contention that liability attaches for such damage only as can be reasonably seen or anticipated. A shipper can not be deprived through a carrier's negligence of any lawful privilege offered by another carrier, especially after due diligence on his part to secure such advantage; but such privilege must itself be not only one which the carrier may lawfully allow after the establishment thereof, but it must also be duly established and filed with the Commission as are rates and all privileges and services to which they apply. *Folmer & Co. v. Great Northern Ry. Co. et al.*, 15 I. C. C. Rep., 83. The obvious purpose of this requirement is that all may alike know what services and privileges are to be covered by the rates published, in order to prevent discriminations.

It follows that the complaint must be dismissed, and it will be so ordered.

15 I. C. C. Rep.

Nos. 698 and 707 (Sub-No. 2).

J. K. JOICE & COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.; AND 112 OTHER CASES DISPOSED OF IN ORDER OF JANUARY 27, 1909, WHEREIN PARTIES ARE SPECIFICALLY NAMED, WHICH CASES ARE INDICATED BY DOCKET SUBNUMBERS AS FOLLOWS: 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 43, 44, 46, 47, 48, 49, 50, 51, 178, 179, 180, 181, 183, 184, 185, 186, 187, 301, 303, 305, 306, 308, 309, 310, 312, 313, 314, 315, 320, 321, 322, 323, 324, 327, 330, 332, 333, 334, 335, 336, 338, 339, 342, 343, 344, 345, 346, 347, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 365, 366, 367, 368, 369, 370, 371, 373, 377, 378, 379, 380, 381, 391, 394.

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*Submitted January 26, 1909. Decided January 27, 1909.*

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On motion of various complainants in 113 supplemental complaints of like character involving claims for reparation for unreasonable rates on lumber on the basis of decisions of the Commission in the original proceedings (698 and 707), a written agreement or stipulation providing for compromise settlement of these claims, it appearing that the same contains no provisions inconsistent with law, is approved as a basis for final settlement and satisfaction thereof, in so far as it relates to matters within the Commission's jurisdiction.

*Wimbish, Watkins & Ellis* for complainants.

*Ed. Baxter, R. Walton Moore, Sidney F. Andrews, and M. P. Callaway* for defendants.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

These cases, 113 in number, having been submitted for disposition upon written agreement or stipulation between the parties thereto, in compromise and settlement of the same, subject to the approval of the Commission, and an order having been entered of record by the Commission on January 27, 1909, approving and authorizing the settlement provided for in said agreement or stipulation, wherein the parties complainant and defendant to be affected by this report are

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all severally and definitely named; the foregoing statement of the cases by number only is deemed sufficient for the purposes of this report. These cases have been given numbers supplemental to those of the original cases (698 and 707), to which latter cases they relate, as hereinafter shown.

The origin, status, and cause of complaint common to all these cases are shown by the following statement in our report of June 25, 1908, in the case of *Nicola, Stone & Myers Co. v. Louisville & Nashville R. R. Co. et al.*, 14 I. C. C. Rep., 199, and other cases covered by the same report:

These cases are all claims for reparation on account of shipments of lumber, and grow out of and are based upon the reports of the Commission in cases Nos. 698 and 707, decided by the Commission February 7, 1905, and upon the decrees of the courts enforcing those orders.

The order in the first-named case, No. 698, entitled *H. H. Tift, W. S. West, J. Lee Ensign, J. S. Betts & Company, Garbutt Lumber Company, Alapaha Lumber Company, and Southern Pine Company v. Southern Railway Company, Atlantic Coast Line Railroad Company, Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway Company, Seaboard Air Line Railway, Central of Georgia Railway Company, Georgia Southern & Florida Railway Company, Macon & Birmingham Railway Company, and the Southeastern Freight Association, and S. F. Parrott, chairman of said Southeastern Freight Association*, is as follows:

"This case being at issue upon complaint and answers on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had and the Commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

"*It is ordered*, That the advance of 2 cents per 100 pounds, established on June 22, 1903, over rates previously in effect for the transportation of lumber in carloads from shipping points on the respective lines of the defendant railroad companies in the state of Georgia to Cincinnati, Louisville, Evansville, Cairo, and other points on the Ohio River commonly called and known as Ohio River points, which said advance has since been maintained and enforced by the defendants, was and is excessive, unreasonable, and unjust and in violation of the provisions of the act to regulate commerce, and the rates and charges resulting from the said advance made by the defendants (which said rates and charges are more specifically referred to in said report and opinion) are also excessive, unreasonable, and unjust and in violation of the provisions of the act to regulate commerce; and that the defendants, the Southern Railway Company, the Atlantic Coast Line Railway Company, the Louisville & Nashville Railroad Company, the Nashville, Chattanooga & St. Louis Railway Company, the Seaboard Air Line Railway, the Central of Georgia Railway Company, the Georgia Southern & Florida Railway Company, and the Macon & Birmingham Railway Company, be, and each of them is hereby, notified and required to cease and desist, on or before the 1st day of April, 1905, from further maintaining or enforcing said unlawful advance of 2 cents per 100 pounds, or the said unlawful rates and charges resulting therefrom, for the transportation of lumber as aforesaid.

"*And it is further ordered*, That a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of section 15 of the act to regulate commerce."

The order in the other case mentioned, No. 707, entitled *The Central Yellow Pine Association v. Illinois Central Railroad Company; Gulf & Ship Island Railroad Company; Southern Railway Company; Mobile & Ohio Railroad Company; New Orleans & North Eastern Railroad Company; Alabama Great Southern Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama & Vicksburg Railway Company; Louisville & Nashville Railroad Company; Mobile, Jackson & Kansas City Railroad Company*, is as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report and opinion containing its findings of fact and conclusions thereon, which said report and opinion is hereby referred to and made a part of this order:

"*It is ordered*, That the advance of 2 cents per 100 pounds established by the defendant, the Louisville & Nashville Railroad Company, on June 22, 1903, and by the other defendants herein on April 15, 1903, over rates previously in effect for the transportation of lumber in carloads from shipping points on defendants' respective lines in the state of Louisiana east of the Mississippi River, and in the states of Mississippi and Alabama, to Cincinnati, Louisville, Evansville, Cairo, and other points on the Ohio River, commonly called and known as Ohio River points, which said advance has since been maintained and enforced by the defendants, was and is excessive, unreasonable, and unjust, and in violation of the provisions of the act to regulate commerce; and that the rates and charges resulting from the said advance (which said rates are more specifically referred to in said report and opinion) are also excessive, unreasonable, and unjust, and in violation of the provisions of the act to regulate commerce; and that the defendants, the Illinois Central Railroad Company, the Gulf & Ship Island Railroad Company, the Southern Railway Company, the Mobile & Ohio Railroad Company, the New Orleans & North Eastern Railroad Company, the Alabama Great Southern Railroad Company, the Cincinnati, New Orleans & Texas Pacific Railway Company, the Alabama & Vicksburg Railway Company, the Louisville & Nashville Railroad Company, and the Mobile, Jackson & Kansas City Railroad Company, be, and each of them is hereby, notified and required to cease and desist, on or before the 1st day of April, 1905, from further maintaining or enforcing the said unlawful advance of 2 cents per 100 pounds, or the said unlawful rates resulting therefrom, for the transportation of lumber as aforesaid.

"*And it is further ordered*, That a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of section 15 of the act to regulate commerce."

As shown by these reports and orders, the rates found by the Commission to have been unreasonable, unjust, and unlawful, and which the defendant carriers were required to cease and desist from charging were those from points on their respective lines in Louisiana (that part east of the Mississippi), Mississippi, Alabama, and Georgia to points on the Ohio River, whether on shipments destined to stop at such points or moving to points north of that river. In proceedings instituted in the circuit court in the southern district of Georgia and at New Orleans for that purpose decrees were duly entered for the enforcement of the orders of the Commission in all respects, which decrees were, upon appeal, affirmed by the United States circuit court of appeals and subsequently by the Supreme Court of the United States.

The complaints before the Commission in those cases were brought on account of an increase of 2 cents per 100 pounds in the rates on lumber charged by the carriers therein named, as stated in said reports and orders. At different dates in the summer of 1907, and subsequent to the affirmance by the Supreme Court on May 27, 1907, of the decrees entered in the proceedings before mentioned, all the defendant carriers



therein, in obedience to these decrees, reduced their rates by the amount of the said 2 cents per 100 pounds, thus restoring on this traffic moving between the points of origin and destination in question the rates which were in existence prior to the increase. The claims in the cases under consideration are for reparation based on the excess of 2 cents per 100 pounds, by which amount the former rates had been increased, and which increased rates were enforced and collected by the carriers from the dates of their establishment, set forth in the reports and orders mentioned, to the various dates of their reduction in the summer of 1907 in obedience to the decrees of the courts.

These claims for reparation, however, include shipments from points of origin in the territory embraced in the orders mentioned to points of destination south of the Ohio River not embraced in those orders, and also include shipments from Florida and other territory not embraced in said orders to destinations on and north and south of the Ohio River. Claims of the two classes last above mentioned are based upon the fact that increases similar to those set forth in the reports and orders stated were simultaneously made by the carriers involved, and these claims are urged upon the theory that the facts, circumstances, and conditions affecting the rates applied to these shipments and the transportation thereof were substantially the same in all respects as were those in the cases embraced in those reports and orders. It is also contended that the orders in the cases mentioned substantially and in legal effect applied to these cases alike.

The answers of the defendants in the cases now under consideration are to the effect that for various reasons, hereinafter referred to, the complainants are not entitled to an award of reparation, even if all the allegations in their respective complaints should be admitted or established.

Under a rule of practice adopted by the Commission for the disposition of questions presented in the nature of demurrers, the defendants, by their counsel, upon the assignment of these cases for hearing, presented questions of the nature referred to arising from the pleadings, and which we will now proceed to consider for the purpose of simplifying future proceedings and findings and the taking of additional testimony as to pertinent questions involved in these cases which are fairly illustrative of many others of like character now pending before the Commission.

Respecting further proceedings in the cases covered by that report, as well as in other cases of like character then pending, being in number over 400, and including the 113 cases now under consideration, we stated in that report as follows:

It is our conclusion that the unreasonableness of the rates on the lines of the carriers defendant in the former proceedings referred to from points of origin to points of destination embraced within the orders of the Commission in those proceedings has already been established by the orders of the Commission, the reports on which they were based, and the judicial proceedings and decrees for the enforcement of those orders. It is our further conclusion that reparation should be awarded to the parties shown to be entitled thereto for the difference between the rates condemned by said orders and the higher rates paid since the date of their establishment. The right to recover reparation is not confined to shipments made by parties to the former proceedings, but extends to all shipments charged for on the basis indicated, by whomsoever made.

On these shipments the Commission will proceed to order reparation in favor of the parties entitled thereto, in accordance with this conclusion, upon proof of shipment and amounts due on the basis indicated, including interest at the rate of 6 per cent per annum on such excess charges from the date of payment thereof.

15 I. C. C. Rep.

Since these claims involve shipments from points of origin to points of destination, neither of which are embraced in the reports and orders mentioned, but which are intermingled in the cases now before us with shipments the origin and destination of which are covered in the previous orders, we will, for the convenience of the parties and of the Commission, take evidence in claims of each class in the same manner. We will not, however, enter orders for reparation in the former class of cases, but will later hear the carriers on the question of the reasonableness of the rates applied on such shipments.

It is urged by the complainants, as before stated, that the facts, circumstances, and conditions in respect to all these shipments and rates of both classes are substantially similar in all respects, and that the reports and orders in the prior proceedings are controlling as to the whole situation in the territory involved. However this may be, the Commission has no jurisdiction or authority to make orders for reparation on account of any alleged excessive rate except when, upon complaint, notice to the defendants, and full hearing, such rate has been challenged and, upon investigation, found to be unreasonable and unjust. While the alleged similarity in circumstances and conditions if established at such hearing might afford a basis for forceful argument for like action by the Commission, we can not assume such similarity as a basis for an award of reparation. In proceedings before the Commission the defendants are entitled to what corresponds in a judicial proceeding to their "day in court."

Pursuant to the foregoing announcement, some of the cases now under consideration were subsequently further heard in part, and all of these, as well as those remaining of the cases above referred to, were assigned for further hearing on January 19, 1909; whereupon on January 12, 1909, the parties complainant and defendant named in these cases and specifically set out in the order above referred to, of January 27, 1909, entered into a written agreement, duly signed by their respective attorneys, wherein it is stipulated that the defendant carriers therein named shall pay to the complainants, also referred to therein, the sum of \$165,000, in satisfaction of these claims, subject to the approval of the Commission.

It appearing to the satisfaction of the Commission that none of the provisions or terms of this agreement or stipulation, in so far as the same relates to matters within the Commission's jurisdiction, is inconsistent with any provision of law, we have approved the same, as above stated, and authorized the defendants to pay to complainants the above-named sum in satisfaction of these complaints, reserving the right to require, if hereafter deemed necessary, a statement showing in detail the distribution of this fund among the several complainants participating therein.

The order referred to, after suitable reference to the parties indicated herein, is as follows:

The Commission having under consideration the above-named petition and matters therein presented, and it appearing that a written agreement or stipulation between the petitioners and the above-named defendant carriers, dated January 12, 1909, duly signed, and providing for the payment by said defendant carriers to the petitioners, through their attorneys, Messrs. Wimbish, Watkins & Ellis, of \$165,000, in satisfaction

of said claims for reparation and for the purposes as stated in said agreement or stipulation, subject to the approval of this Commission, has been presented by the parties for such approval, and it further appearing to the satisfaction of the Commission that none of the terms or provisions of said agreement or stipulation, in so far as it relates to matters within the Commission's jurisdiction, is inconsistent with any provision of law, the same is hereby approved by the Commission, and the said defendants are hereby authorized to pay to the said petitioners the said sum of \$165,000, pursuant to the terms of said agreement or stipulation, such sum when paid pursuant to the terms of said agreement to be in full satisfaction of the complaints and claims covered by said agreement or stipulation, in conformity with the intent and provisions thereof: *Provided*, That the Commission reserves the right to require, if it shall deem it necessary, a statement showing in detail the distribution of this fund among the several claimants participating therein.

These cases will be retained until we are duly advised of the payment of this stipulated sum in accordance with the terms of the agreement referred to, whereupon they will be dismissed as having been satisfied.

15 I. C. C. Rep.

No. 1553.

C. J. HAFEY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY  
ET AL.

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Submitted November 15, 1908. Decided February 2, 1909.

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Upon complaint alleging that the present rate of 8 cents per 100 pounds for the transportation of crude petroleum from Paola, Kans., to Kansas City, Kans., is unjust and unreasonable; *Held*, That said rate is excessive, and that a reasonable rate should not exceed 7 cents per 100 pounds.

*C. J. Hafey* for complainant in person.

*F. C. Dumbleck* for defendants.

#### REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

This complaint challenges the lawfulness of defendants' rate of 8 cents per 100 pounds for the transportation of crude petroleum, in carloads, from Paola, Kans., to Kansas City, Kans., the traffic passing en route through a portion of Missouri. Complainant contends that the 8-cent rate is unreasonable and unjustly discriminatory because: (1) It exceeds the rate upon the same commodity for similar distances within the state of Kansas established by the Kansas railroad commission. (2) It is relatively high as compared with rates to the same destination from certain points in Oklahoma which compete with Paola in the sale of crude oil at Kansas City. (3) The quality of complainant's petroleum is such that it must be given a rate at least 3 cents less than the rate from the Oklahoma field to enable it to be sold in Kansas City in competition with oil from that field.

Complainant has been shipping oil from Paola since May, 1907. The distance from Paola to Kansas City is 43.7 miles. In the absence of commodity rates, oil in carloads takes fifth class rates in Western Classification territory. The fifth class rate from Paola to Kansas City is 10 cents per 100 pounds, and this is the rate which was applied to complainant's shipments prior to January, 1908.

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During the latter part of 1907 complainant addressed a letter to this Commission suggesting that the 10-cent rate was unreasonable and should be reduced to 7 cents. This letter was referred to the St. Louis & San Francisco Railroad Company, which shortly thereafter voluntarily reduced the rate to 8 cents. After establishment of the 8-cent rate complainant, still being of opinion that the rate should not exceed 7 cents, filed the formal complaint which is now before us.

The Kansas railroad commission has established rates on petroleum within the state of Kansas upon a distance basis. Under these Kansas distance rates the charge for the transportation of crude petroleum 43.7 miles (the distance between Paola and Kansas City) would be  $5\frac{1}{2}$  cents per 100 pounds, or  $2\frac{1}{2}$  cents per 100 pounds less than the interstate rate in question. Defendants contend that the Kansas state rates are unreasonably low and were established and are being used by defendants under protest. The Commission is not informed of the circumstances or conditions which induced the Kansas commission to require adoption of the rates now in force.

The distance from Nowata, Okla., to Kansas City is 221 miles, the fifth class rate 29 cents and the crude petroleum rate 10 cents per 100 pounds. The distance from Red Fork, Okla., to Kansas City is 270 miles, the fifth class rate 36 cents and the crude petroleum rate 17 cents per 100 pounds. It is said that there is no movement of crude petroleum from Red Fork, but complainant contends that he can not sell his product in Kansas City in competition with the Nowata product under the 10-cent rate. That is to say, the petroleum produced at Paola is of a lower grade than that produced at Nowata, and the difference in value is greater than the 2 cents difference in freight rates.

An element of importance in the fixing of rates is the value of the article shipped, for that affects the value of the service to the shipper, and within certain limits it is not only proper but necessary that the carrier should consider the value of the article offered for transportation. However, when the carrier has established a reasonable rate for the transportation of a given commodity it is not believed it can be required to change that rate to accord with the differing values of the same commodity produced by different shippers—in other words, to equalize natural business conditions. If this were so, the rate might be made to fluctuate not only to meet the value of the commodity, but the executive or business ability of each individual producer. We are, therefore, of opinion that the difference in quality between complainant's oil and that produced at Nowata does not of itself entitle complainant to a lower rate. It is also well settled that, although rates established by state authority may be valuable for the

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purpose of comparison, they are not conclusive of the unreasonableness of a relatively higher interstate rate. *Hope Cotton Oil Co. v. T. & P. Ry. Co. et al.*, 12 I. C. C. Rep., 265. Therefore, we are not of opinion that complainant is, as a matter of right, entitled to a rate as low as that established by the state of Kansas for a similar distance. But we are of the opinion, all things considered, that the 8-cent rate in question, resulting in a charge of more than  $3\frac{1}{2}$  cents per ton per mile, is somewhat excessive, and that a just and reasonable rate should not exceed 7 cents per 100 pounds.

An order will be issued accordingly.

15 I. C. C. Rep.

No. 1112.

## CRANE RAILROAD COMPANY

v.

PHILADELPHIA &amp; READING RAILWAY COMPANY ET AL.

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Submitted October 19, 1908. Decided February 2, 1909.

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The complainant, a railroad company having 1.9 miles of track, connecting the Crane Iron Works and 5 other industries at Catasauqua, Pa., with defendants' tracks, asked for the establishment of through routes and joint rates upon interstate shipments between points on its line and all points on defendants' lines; *Held*, upon all the facts and circumstances disclosed, that complainant is not entitled to the order sought in this proceeding.

*William A. Glasgow, jr., Charles F. Diggs, and Cyrus G. Derr* for complainant.

*Charles Heebner and J. D. Campbell* for Philadelphia & Reading Railway Company.

*Jackson E. Reynolds* for Central Railroad Company of New Jersey.

*Kenefick, Cooke & Mitchell* for Lehigh Valley Railroad Company.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

Complainant seeks the establishment of through routes and joint rates with defendants for interstate shipments from and to the plant of the Crane Iron Works and the plants of 5 other industries on its line of railway in Catasauqua, Pa., and prays that \$2 per car hauled by its motive power for the round trip between these various industries and the exchange tracks of defendants be fixed as its share of each through rate. Reparation is asked.

The city of Catasauqua has a population of about 6,000 and is situated on the westerly side of the Lehigh River. The works of the Crane Iron Company and the other industries lie between the city and the river. The Lehigh Coal & Navigation Company's canal is near the river. The tracks of the Central Railroad of New Jersey extend alongside the river on the westerly side between the river and canal. The tracks of the Lehigh Valley and Philadelphia & Reading are on the easterly side of the river, and connection therewith is made by complainant by means of bridges across the canal and river.

15 I. C. C. Rep.

In 1895 the Crane Iron Works, a Pennsylvania corporation, acquired an iron manufacturing plant located at Catasauqua, consisting of 3 blast furnaces, together with appurtenant buildings, storage bins, etc., and a private railroad connected with the works. The iron plant was constructed in 1839 and has been operated with substantial regularity since that year by different corporations. It does not appear when the railroad operated in connection with the works was constructed or when it was extended to connect with exchange tracks of the different defendants. It does appear, however, that it has been in use for the purposes of the iron plant for more than thirty years. At different times other industries were established in the vicinity of the iron works and the railroad extended to them. All traffic from and to defendants' exchange tracks from and to the other industries, as well as from and to the iron works, is hauled by the motive power of the road connected with and primarily built for and operated by the iron works.

Prior to 1890 the Crane Iron Company, predecessor of the Crane Iron Works, owned a controlling interest in the Catasauqua & Fogelsville Railroad, which extends from a point directly across the river from the iron works to Alburtis, Pa., a distance of about 15 miles, where it connects with a branch of the Philadelphia & Reading. In that year the iron company sold its interest in the Catasauqua & Fogelsville Railroad to the Reading Company, and it has since been operated as a part of the Reading system. The stock of the Crane Iron Works was acquired in the year 1902 by the Empire Steel & Iron Company, a New Jersey manufacturing and stockholding corporation.

Up to July, 1906, the Crane Iron Works operated the railroad in connection with its plant, and transported cars loaded with freight to and from five other industries located on its rails to and from exchange tracks of defendants. The industries thus served are: Bryden Horse Shoe Company, manufacturer of horseshoes; Lehigh Fire Brick Company, manufacturer of fire brick; F. W. Wint & Company, lumber yard, planing mill, and sash factory; Lehigh-Northampton Gas & Electric Company, gas plant; and Catasauqua Castings Company, manufacturer of iron castings. The average distance that cars are transported from and to the industries mentioned, as stated by witnesses for complainant, is 3,200 feet.

Complainant is a corporation organized under the general railroad incorporation act of the state of Pennsylvania in July, 1905. It did not act under its incorporation until July, 1906, when the tracks and other railroad property operated by the Crane Iron Works were transferred to it by deed for a consideration of \$25,000, subject, however, together with the other property of the Crane Iron Works, to one mortgage of \$200,000 and another mortgage of \$500,000.

15 I. C. C. Rep.



The capital stock of complainant was originally fixed at \$30,000, which was all subscribed for by the Empire Iron & Steel Company. Subsequently the capital stock was increased to \$100,000, the increase being subscribed for by the holding company. When the property was deeded to it complainant went into possession and has since operated the railroad. At that time the road, including a so-called main line of 2,200 feet and all branches, was 1.9 miles long. The equipment comprised five engines and eleven wooden dump cars which were not designed for use in general traffic and were not permitted to pass from complainant's tracks. For the most part the rails are laid on land owned by the Crane Iron Works. The deed of conveyance grants a right of way to complainant of 10 feet in width. The tracks extend beyond the property of the iron works where they cross the bridge over the river to connect with exchange tracks of the Lehigh Valley and Reading, and where short branches have been extended to connect with tracks owned by and on the property of the other industries.

Complainant does not maintain a public freight station or place of any sort for the receipt or delivery of freight for the public, nor does it bill freight from any point on its line. Counsel for complainant make the statement that some package freight from shippers in Catasauqua is transported by complainant from the westerly side of the river to the depot of the Philadelphia & Reading, but there is no evidence which tends to show that complainant has ever received carload and less than carload freight from the general public for shipment in any direction. The business of complainant has been conducted in the same manner since the road was acquired by it as before that date. Cars loaded with freight consigned to the industries on complainant's line are received by it at defendants' delivery tracks and transported to the various industries and placed where requested by consignees. Cars are also taken from the industries and delivered to defendants' exchange tracks. Where internal switching is required complainant charges each industry for which such service is performed 50 cents per car.

For more than sixteen years tariffs of defendants have provided that rates on all traffic, except coal and coke, to and from Catasauqua include delivery to and receipt from all the industries on complainant's line, except deliveries to and from the Crane Iron Works. Rates are made to and from Catasauqua out of which defendants have allowed complainant a certain amount for switching service to and from the other industries according to the quantity transported. Prior to 1900 the amount allowed complainant was 5 cents per ton. Early in that year, after conference between the Lehigh Valley and the Central of New Jersey, the allowance was

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increased to 6 cents. The allowance by the Philadelphia & Reading of 5 cents was fixed in 1890 as one of the conditions of the sale of the Catasauqua & Fogelsville Railroad, and this was continued until 1902, when it was raised to 6 cents.

Complainant filed a tariff effective January 1, 1907, as follows:

Switching tariff between lines with which it connects at Catasauqua and points on Crane railroad, \$2 per car.

This tariff was canceled and reissued effective January 12, 1908, as follows:

Switching tariff between lines with which it connects at Catasauqua and points on Crane railroad, \$2 per car. This switching movement consists in handling a loaded car one way and the return of the empty car, or the placing of an empty car and returning it loaded. If for any reason an empty car is ordered and the service is performed and the car is not loaded, the charge will be the same as if moved in one direction loaded.

On shipments of coal and coke to industries other than the Crane Iron Works complainant charges the consignees \$2 per car. With respect of such shipments to the Crane Iron Works complainant has rendered bills of \$2 per car to defendants, which they have refused to pay. Shipments of coal and coke are mostly intrastate, although it appears that occasional shipments of coke are made from Buffalo, N. Y., and occasional cars of coal are received from interstate points. During the year 1907, out of a total number of 25,710 cars handled by complainant from and to exchange tracks of defendants, 21,295 were handled for the Crane Iron Works. From one-third to one-half of the traffic handled by complainant is interstate.

Under date of November 5, 1906, complainant's president notified defendants by letter that complainant had "established a rate of \$2 per car on all freight in carloads handled by it for connections at Catasauqua." A request was made that, effective January 1, 1907, defendants should publish rates to and from Catasauqua in connection with complainant's line and absorb the latter's established rate of \$2 per car on all shipments the rate for which equals or exceeds 50 cents per ton. Defendants refused the request. In 1900, when the allowance to complainant for its service from and to the industries other than the Crane Iron Works, as the result of conferences between representatives of complainant and the Lehigh Valley and Central of New Jersey, was increased from 5 to 6 cents per ton, complainant was notified by letter signed by representatives of the two roads named, in which, among other things, appears the following:

In connection with the new arrangement, it seems proper to add that the old arrangement for the absorption of this expense by the railroad carriers was an exceptional one, occasioned by inharmonious conditions, and the railroads represented at the Catasauqua conference have been influenced in consenting to advance the allowance rather than to discontinue it altogether by the fact that it has been in force a

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long while and therefore its withdrawal might occasion disadvantage to the concerns now located on the branch and ill-feeling toward your company on the part of the several interests; and its withdrawal altogether would be likely to prevent new industries from hereafter locating on the branch.

It is urged by defendants that their rates are published from and to Catasauqua, which means from and to their delivery tracks in that borough, and that the rates were established as low commodity rates in consideration of the fact that the bulk of the traffic was from and to the Crane Iron Works, whose owner would perform or have performed the transportation from and to delivery tracks of defendants. In respect of delivery to industries other than the Crane Iron Works it is asserted that rates from and to Catasauqua on all commodities except coal and coke include absorption of a certain established switching charge, the rates being fixed accordingly, and that this was done for the accommodation of these industries and to benefit the Crane railway.

The first question presented is whether complainant is a common carrier of interstate traffic by railroad within the meaning of the first section of the act to regulate commerce. On this record a determination of the question is not free from difficulty. Complainant is incorporated as a railroad company under the laws of Pennsylvania, which declare that all railroads incorporated and operated under its provisions shall be common carriers. It owns and operates a line of railroad. It does not maintain a freight station or other place at which it might receive from and deliver to the general public carload and less than carload freight. Its business, so far as the record shows, has been and is confined to moving cars loaded and empty between defendants' exchange tracks and the six industries located on its line. Complainant has never billed freight to any point. It has filed a tariff with and makes reports to the Commission, but this tariff shows on its face that the rates named therein are for car-switching service to certain industries only. No rates are published from point to point on its own line, or from a point on its line to any point on another line.

The mere fact that complainant's road is owned by a corporation which also owns the stock of the largest shipper over it, and that it was originally organized and built for the purpose of doing the work of that shipper, is not in our opinion controlling against its being held a common carrier. While there may be grave objections to allowing shippers to build and operate through subsidiary corporations railroads over which their own traffic moves, the interstate commerce act contains no provision which makes such relations unlawful, unless it be held that the fifth paragraph of the first section, commonly called the commodities clause, constitutes a definite prohibition. *Re Division of Joint Rates*, 10 I. C. C. Rep., 385-389.  
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The ownership of a rail line by a shipper which serves that shipper, and perhaps a number of others, calls for the closest scrutiny of all charges and practices to ascertain whether there is undue discrimination through divisions or allowances which are the equivalent of rebates to the shipping owner.

With respect of all traffic hauled by it, except coal and coke, complainant makes no charge against the consignees or consignors, and frankly admits that it has never collected its published tariff rates. On shipments of coal and coke it has charged and collected \$2 per car from all industries except the Crane Iron Works, and for shipments to that plant it has rendered bills of \$2 per car to defendants. It does not appear that complainant holds itself out as a common carrier of freight for the general public. It has never advertised, either in its published tariffs or otherwise, that it would carry freight for the general public. The evidence fails to show that in the conduct of its business it has ever carried freight for shippers generally. Whether under the laws of Pennsylvania complainant would be liable in an action for damage by a party for whom it might refuse to carry we need not determine.

Upon this record we are not sufficiently informed to reach a conclusion with confidence as to whether complainant is or is not a common carrier by railroad within the meaning of the act. Proof is wanting that complainant has ever done more than to act as a delivering carrier of certain carload freight tendered it by the industries on its line or by defendants for deliveries to those industries. What might be the holding upon more complete showing, after complaint of undue discrimination or unjust rates as provided in the act, we of course can not undertake to forecast. We are unable to find as a fact on the present record that complainant is subject to the act.

While on this conclusion the complaint might be dismissed we are of the opinion that even if we could find on the facts now disclosed that complainant is a common carrier of interstate traffic by railroad, it does not follow that the through routes and joint rates sought by this complaint should be required. In the first place, no such order can be predicated on the allegations of the complaint before us. No points of origin or destination on the lines of defendants are named, nor are the commodities specified to which maximum rates are to be applied. A general order such as is asked for would result in the establishment of three through routes to points reached by all the defendants, which clearly is not contemplated by the statute and is therefore beyond the power of the Commission to establish. These considerations, however, go to the form of the complaint rather than to its substance, and mere defects of pleading should not control our decision. But we are of the opinion that complainant is not entitled

on the showing now made to an order for through routes and joint rates on traffic handled in connection with the defendant lines.

While it may be assumed that a railroad company is competent to file a complaint before the Commission under the provisions in question and to demand an order establishing through routes and joint rates with its connections, its right to such an order is to be tested by various considerations, including the needs and convenience of the community which it seeks to serve. *Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co.*, 13 I. C. C. Rep., 20. Complainant insists that as a matter of right it is entitled to receive out of the rates fixed by defendants to Catasauqua \$2 for each car handled by it from and to the delivery tracks of defendants. More than four-fifths of the traffic handled by complainant is for the Crane Iron Works. It is stated by witnesses for defendants, and the statement is not disputed, that rates to Catasauqua on traffic shipped by and to the Crane Iron Works were made low in consideration of the fact that switching would be done by complainant.

Now, if a reasonable switching charge be added to the present Catasauqua rates the result would be of no benefit to the Crane Iron Works and might effect a substantial increase of charges to all the other industries served by complainant. So far as appears these other industries are not complaining, nor have we anything before us which indicates that the general public in Catasauqua is not reasonably well served with the existing facilities and arrangements. There is no transportation burden now imposed on shippers from and to Catasauqua which would in any degree be lessened by such an order as complainant is demanding.

The evidence shows that the Crane Iron Works has refused to pay complainant for any delivery service rendered to it, and the effort of complainant to secure the payment for such service from the defendant carriers out of the Catasauqua rates does not seem to us to be justified by the facts now appearing. It may be that the existing allowances to complainant for handling cars to and from the other industries are too low. As to that we express no opinion. As the case is now presented these allowances are mere matters of contract between complainant and defendants, over which the Commission has no primary control.

In the light of the origin and history of the situation which the record presents, including its continuance for a long period of years, and taking into account all the facts and circumstances disclosed, we are constrained to hold that complainant is not entitled to an order for through routes and joint rates with the defendants. This conclusion renders it unnecessary to consider the claim for reparation.

An order dismissing the complaint will be made accordingly.

15 I. C. C. Rep.

No. 1504.

ROYAL BREWING COMPANY

v.

ADAMS EXPRESS COMPANY ET AL.

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Submitted July 13, 1908. Decided February 2, 1909.

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Under date of June 15, 1907, defendants established a rule which provides that they will not undertake to collect for shippers the purchase price of intoxicating liquors—that is to say, they will not perform for that traffic what is known as “C. O. D.” service; *Held*, That, in view of the practical difficulties attending the “C. O. D.” carriage of intoxicating liquors, the discrimination against that traffic resulting from the rule in question is not undue, and therefore not in violation of the statute.

*J. M. Schoenheit* for complainant.

*T. B. Harrison, jr.*, for Adams Express Company and American Express Company.

*O'Brien, Boardman, Platt & Littleton* for United States Express Company.

*Charles W. Stockton* for Wells, Fargo & Company.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

The complainant is a shipper of spirituous and malt liquors from Kansas City, Mo., to points in other states. The defendants are express companies. The purpose of this proceeding is to determine the lawfulness of an order made by defendants under date of June 15, 1907, which provides that they will not undertake to collect for shippers the purchase price of shipments of intoxicating liquors; in other words, that they will not perform for that traffic what is commonly known as “C. O. D.” service. By stipulation of the parties no evidence was taken and the case was submitted upon complaint, answers, briefs, and argument. The Commission must therefore assume that the material allegations of fact in the complaint and answers are true.

In complainant's brief it is stated that the only issue to be determined is whether or not the practice of express companies in carrying what is known as “C. O. D.” shipments has become one of their duties as common carriers which they now owe to the public, while

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in its reply brief it is alleged that this proceeding is predicated upon the violation of that part of section 3 of the act to regulate commerce which prohibits a common carrier from subjecting any particular description of traffic to undue or unreasonable prejudice or disadvantage. It seems obvious that the question must be decided by the Commission under this section, for it is without authority to enforce compliance by carriers with any duties except those prescribed by the act; for the enforcement of duties not so prescribed the appropriate remedy must be sought in the courts. We shall not, therefore, attempt to determine whether acceptance and carriage of "C. O. D." packages is a duty which may be required by mandamus or otherwise, but only whether the particular facts before us constitute a violation of the regulating statute.

Generally speaking, express companies will accept from any shipper what are known as "C. O. D." packages. The "C. O. D." practice is so generally understood as to not require special explanation. When a shipment is forwarded "C. O. D." the consignee must pay the purchase price of the article to the express company before delivery of the package, and the carrier returns the amount so received to the shipper, charging a certain compensation for the service. As alleged in the complaint, although holding themselves out as willing to do a "C. O. D." business for the public generally, the defendants, by the order of June 15, 1907, gave notice of their refusal to perform such service in connection with the shipment of intoxicating liquors. In their answers, they state the circumstances and conditions which, in their opinion, differentiate "C. O. D." shipments of liquor from other traffic; and, without admitting that this service is a part of their duty as common carriers, contend that the showing made justifies the present discrimination against that traffic.

The answers further state, and it seems to be admitted, that in numerous instances it was found that liquor shippers were taking advantage of the "C. O. D." method of transportation by sending large quantities of liquors to fictitious addresses without having received bona fide orders therefor; that such liquors, when carried to destination, were not called for by the consignees named; that upon being notified to that effect the shippers would by various devices secure customers who accepted many of such shipments and paid the purchase price therefor to the express company's agent; and that in some instances shippers employed traveling salesmen or agents, who visited towns to which liquors consigned to fictitious addresses had been sent, to make sales of the shipments to such customers as could be secured, the result being that large quantities of liquors were constantly stored in the express companies' offices throughout

the country, practically converting such offices into liquor warehouses where liquor could be obtained by persons who agreed with the shippers or their agents to pay the purchase price therefor.

It is further stated that the storage of such shipments at express offices had a very demoralizing effect upon the express companies' employees and the service of the companies generally; that it materially increased their losses from fires and robbery, numerous shipments of whisky being sent "C. O. D." to consignees who had given orders therefor and who did not, upon arrival of such shipments, have funds with which to pay the purchase price; that many of such consignments were made to a lawless element of society who contrived to break into the offices of the express companies for the purpose of obtaining possession of these shipments of liquor; that such robberies or burglaries were in many instances not confined to the liquor shipments, but that other valuable consignments of merchandise and jewelry were stolen along with the liquor; and that in some cases the robbers carelessly or with intent set fire to the express office, thus destroying by fire what was not stolen. It is also alleged that the storage of such liquor shipments for long periods in express offices was a constant temptation to those of the express companies' employees who were inclined to indulge in the use of alcoholic beverages; that many losses, shortages, and embezzlements arose from drunkenness and consequent neglect of duty, which were directly attributable to the storage of "C. O. D." liquor shipments at the offices of the express companies; and that since the discontinuance of such "C. O. D." liquor shipments losses from the sources named have constantly diminished.

It is further urged that the handling of such shipments of liquor "C. O. D." constantly involves the express companies in litigation with local authorities in prohibition communities where the sale and dispensation of liquor is sought to be restricted, regulated, or prevented, and that as a result they have been subjected to a great deal of trouble and expense. It appears to be the fact that several states have recently passed laws imposing heavy license taxes, in some cases as high as \$5,000 per annum, upon each express office in the State where "C. O. D." shipments of intoxicating liquors are delivered, and providing severe penalties for handling such shipments unless these license taxes are first paid.

Although the question here presented has been the subject of considerable litigation in the courts, we are unable to find a case in the federal courts which decides the precise point now before the Commission, presumably for the reason that express companies were not subject to the act prior to the amendments of June 29, 1906. In *Crescent Liquor Co. et al. v. Platt*, 148 Fed. Rep., 894, the United



States circuit court, upon the particular facts there before it, held that it is the duty of an express company doing business as a common carrier to serve the public impartially, and that it has no right to refuse to receive and carry packages of liquor from lawful dealers therein in one state while it receives and carries the same in other states, nor to refuse to carry the same "C. O. D." and to collect and return the purchase money from the consignee in accordance with the general custom of the business where it follows such custom with respect to other commodities. It will be observed in that case that the express companies refused to accept any shipments of intoxicating liquors to certain points in West Virginia, whether "C. O. D." or not, and that they were performing this service for some liquor dealers and refusing to perform it for others.

In the present case the defendants refuse to perform a "C. O. D." service for all liquor dealers alike and therefore it can not be claimed that the order in question discriminates against complainant and in favor of other liquor dealers at Kansas City or elsewhere. In *Danciger et al. v. Wells, Fargo & Co.*, 154 Fed. Rep., 379, a suit against the express company involving substantially the same issue as that now before the Commission was dismissed by the circuit court for the western district of Missouri upon the ground that there is no common-law duty resting upon an express company to act as collection agent of a shipper and require payment of the goods as a condition of their delivery, but that such obligation, if assumed, arises on some independent contract, express or implied, which the company is at liberty to refuse to make in any particular case notwithstanding any usage or custom it may have established or followed.

While these two decisions are apparently somewhat in conflict and each has been urged with considerable force by the parties to this proceeding, we deem it unnecessary to decide whether or not the "C. O. D." business has become a part of the legal duty of an express company, for the reason that we are of the opinion, upon the facts and circumstances disclosed by the record, that the present discrimination against shipments of intoxicating liquors is not unreasonable or undue within the meaning of the third section of the act. It must be remembered that the express company does not decline to transport intoxicating liquors, but merely refuses to act as a collection agent for the shipper. Therefore the only inconvenience to which the liquor shipper is put is to arrange for collection of the purchase price through some means other than the express company; and in view of the very considerable annoyance, damage, and vexatious litigation to which express companies have been subjected when

15 I. C. C. Rep.

acting as collection agents for this class of traffic, we believe the present rule is not unreasonable and may therefore be enforced by defendants for the legitimate protection of their business. It is impossible to avoid the conclusion that the "C. O. D." carriage of intoxicating liquors does involve an express company in numerous difficulties which do not arise in connection with the "C. O. D." transportation of other kinds of traffic; and this may justify the denial to shippers of that traffic of a particular service or facility which is furnished to shippers of other classes of property.

In the present case it is difficult to see how the refusal to handle liquor shipments "C. O. D." inures to the benefit of any other class of shippers or how the transportation of ordinary merchandise "C. O. D." damages the liquor shipper. In view of the peculiar conditions which are shown to attend the "C. O. D." carriage of liquor shipments, we are constrained to hold that defendants have the right to make rules in respect of that traffic which are different from their rules for the transportation of other property without violating section 3 of the act: It follows that the complaint must be dismissed and an order will be entered accordingly.

15 I. C. C. Rep.

No. 927.

YAWMAN &amp; ERBE MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted June 13, 1908. Decided February 2, 1909.*

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The complaint in this case is that the charge of one and one-half times first class rate for the transportation of rapid roller letter copiers in Western Classification territory is unreasonable and unjust and unduly discriminatory; *Held*, That the evidence does not show that the rates resulting from the classification are discriminatory or that they are unreasonable or unjust.

*Fred C. Goodwin and Satterlee, Bishop, Taylor & French* for complainant.

*Maxwell Evarts* for Southern Pacific Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company.

*F. O. Becker* for Chicago, Rock Island & Pacific Railway Company, Missouri Pacific Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Northern Pacific Railway Company, and Atchison, Topeka & Santa Fe Railway Company.

#### REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

Complainant is a New York corporation engaged, among other things, at Rochester, N. Y., in the manufacture and sale of office supplies, including a patented machine called "rapid roller letter copier." The complaint is that the charge of one and one-half times first class rates for the transportation of its copiers in Western Classification territory is unreasonable and unjust, and unduly discriminates in favor of the ordinary letterpress which takes second class rates and is sold in competition with complainant's machine.

The rapid roller letter copier is a device for copying letters, bills, statements, etc. It consists of a base or stand to which the copier proper is attached. The copier is composed of a box or frame inclosing a series of rollers between and around which the copying paper is carried, and a water bath through which it is drawn to moisten it.

15 I. C. C. Rep.

The box is about 14 inches long, 11 inches wide, and 9 inches high, and contains 5 rollers. Of these rollers one is located in the bath and carries the paper in the water, one is located directly above, and one on each side of the largest or main roller to which is attached the handle which operates the machine. There are screws for adjusting the rollers, and various attachments such as a knife for cutting the paper, wire baskets for holding letters before and after copying, and a roll below for winding up the paper after copy has been made. In operation the copying paper is drawn from a supply roll which passes into the bath. The paper then passes around the main roller to which the handle is attached, first passing between the main roller and the roller at its left where the water is squeezed out. The paper then passes between the main roller and the one above where the copy is made. After receiving the copy the paper is carried along by the roller to the right of the main roller and then underneath the copier to a roll where it is wound and remains until dried. The copies of the different letters, etc., are then cut apart and filed.

The principal competitor of complainant's machine, it is asserted, is the old-style screw hand-press in general use. This press consists of two plates, the lower one stationary and the upper one attached to a screw, so that it may be forced down upon the other. The copying paper is contained in a book, and the letter, statement, or bill to be copied is inserted between the leaves of the book, which are moistened by dampened pads or blotters. The copy is made by pressure afforded by screwing down the upper plate. The roller copier consists of 29 pieces and the copy press of 3 pieces.

The copiers and bases are shipped knocked down and boxed, and the copier and base are shipped separately. The base is carried at second class rates in Western Classification territory. The copier is packed for shipment in a box 19 by 32 by 12 inches, which weighs, thus prepared, about 65 pounds. The base is packed for shipment in a box 37 by 5½ by 26½ inches and also weighs about 65 pounds.

The ordinary letterpress is likewise boxed for shipment, the weight varying with the size of the press and ranging from 65 to 1,950 pounds.

It appears that 100 pounds of the copier occupy 4.67 cubic feet of space and of the old-style press 2.81 cubic feet. The value of the roller copier per 100 pounds is about \$26.54 and of the copying press about \$6.44. The copier stands are valued at \$7 each.

During the year 1906 complainant manufactured and sold about 1,700 of the copiers and stands or bases. Of this number 222 were sold in Western Classification territory, of which 151 were shipped from Rochester, N. Y., to New York City and thence to San Francisco by water. So far as appears prior to 1904 the copier was carried as second class by all railroads. In that year the rate was raised in Western

Classification territory to double first class. This rate was maintained for about a year, when, upon application by complainant, it was reduced to one and one-half times first class.

It is insisted by complainant that at the rates charged in Western Classification territory it is unable to sell its machines at a profit when shipped all rail. On this point, however, no definite finding can be made. The tables relating to cost of production and receipts from sales which were submitted and the deductions therefrom made by complainant are unsatisfactory because not based upon actual rates charged, mistakes having been admittedly made in using rates shown in tariffs that are not applicable. These tables also rate the stands with the copier at one and one-half times first class rates, whereas the latter are carried at second class. To that part of the western territory west of a line through the eastern boundary of Colorado, excepting Denver, by using the commodity rate applicable from Rochester to the Pacific terminals and the locals back, the copying machines appear to have been sold at a good profit, and so far as can be ascertained from statements made in behalf of complainant there appears to be a fair profit from sales at all other western points. The evidence shows that these machines are sold at the uniform price of \$30 in all parts of the country east of Denver and at \$34.50 at all points west thereof.

Examination of the classifications on file shows that at this time roller copiers are carried at first class rates in Official Classification territory. It appears that for many years complainant's machine was shipped simply as a "letterpress" and took the second class rates applicable to such shipments. There was no classification of roller letter copiers in any of the classifications prior to 1906. In the Southern Classification it is not clear just what is meant by the terms used. Copying stands now appear to take first class and letterpresses and copiers second class rates. It is insisted by defendants that if complainant properly describes its machine it will take first class rates when shipped to points in Southern Classification territory. On the other hand, it is insisted by complainant that its copier is now and always has been carried as second class in that territory.

There are certain conditions which govern the classification of freight, including, (a) weight per cubic foot, (b) value per cubic foot, (c) risk of breakage, and (d) volume of traffic. The rapid roller letter copier is a machine composed of 29 parts and is not fairly to be compared, for classification purposes, with the ordinary letterpress. While it is put to the same use, the copier per 100 pounds occupies nearly twice as much space as the old-style press of the same weight, and is worth nearly four times as much. The volume of traffic furnished by complainant's machine in Western Classification territory

is insignificant. Not more than half a carload per annum is shipped west and most of that is carried by water. The evidence does not show the amount of traffic in western territory furnished by the ordinary letterpress, but because of the differences above noted it is clear that the copier is fairly placed in a higher class.

It follows that the complaint should be dismissed, but the conclusion should not be taken to justify an increase, by changes in classification or otherwise, of the rates on letter copiers in Southern or Official Classification territory, as no opinion with respect of those rates is intended to be expressed.

An order will be entered accordingly.

The attention of the Southern Classification Committee is called to the description of roller letter copiers in its classification, and it is suggested that this description be so amended as to remove any ambiguity therein.

15 I. C. C. Rep.

No. 1708.

## SHIPPERS' &amp; RECEIVERS' BUREAU OF NEWARK

v.

NEW YORK, ONTARIO &amp; WESTERN RAILWAY COMPANY.

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*Submitted December 3, 1908. Decided February 1, 1909.*

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1. An increase in the cost of labor, and in the price of railway materials and supplies, does not necessarily imply a decrease in the net earnings of a carrier or preclude the possibility even of an increase in its net earnings, due to an increase in the volume of its traffic or to a decrease in the ratio of its operating expenses to its operating revenues; nor is an increase in the cost of labor and materials, accompanied by a decrease in the net revenues of a carrier, necessarily inconsistent with the possibility that its net earnings may still suffice to afford it a fair return on the investment without an increase in its rate schedules.
2. On the record the defendant's rate of \$1.60 per net ton for the transportation of stone in carloads from East Branch, N. Y., to Weehawken, N. J., a distance of 150 miles, is found to be unreasonable, and a rate of \$1.40 per net ton is prescribed as a maximum for the future.

*Isaac F. Roe and M. B. Williams* for complainant.*John B. Kerr* for defendant.

## REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

The defendant, the New York, Ontario & Western Railway Company, for ten years previous to October 22, 1907, demanded a rate of \$1.40 per net ton in carloads for the carriage of stone from East Branch, in the State of New York, to Weehawken, in the State of New Jersey, a distance of 150 miles; and under that rate, as is alleged, such members of the complainant's bureau as are engaged in the shipment of stone between those points were able to maintain their trade in competition with quarries located on the lines of the Lehigh Valley Railroad, the Delaware, Lackawanna & Western Railroad, and the Erie Railroad. But by a tariff that became effective on the date mentioned, the defendant increased many of its rates on stone by approximately 20 cents per ton. Although some of these increased rates were subsequently reduced, the rate complained of here, which was raised from \$1.40 to \$1.60, has not been readjusted. This results, as is alleged, in an unjust and unreasonable charge in and of itself, as well as in a discriminatory charge, as is further alleged, in that

15 I. C. C. Rep.

comparatively lower rates are in effect on the other aforementioned lines for equal and even longer hauls. The quarries on behalf of which the complaint was filed are located at East Branch and can not advantageously avail themselves of the lower rates offered by the other carriers.

On the part of the complainant proof was offered showing that after the increase in rates became effective the volume of its sales at Weehawken was materially diminished. This the defendant in its brief attributes to the so-called panic of 1907-8, and it asserts that East Branch stone was afterwards shipped to other and better markets. The complainant supported its contention also by showing rates of \$1.35 per net ton now in effect on stone to Jersey City terminals from points on the Lehigh Valley 250 or more miles distant; rates of from \$1.25 to \$1.35 on shipments of stone to the same destinations from points on the Delaware, Lackawanna & Western from 166 to 179 miles distant; and also rates of \$1.40 per net ton to the Jersey City terminals from points on the Erie from 141 to 154 miles distant. The quarries from which these rates are available are in the same general territory, and are said to be in competition with the quarries from which the defendant demands and collects the rate of \$1.60 of which complaint is made.

Other testimony was offered by the complainant, which it will not be necessary to consider in detail. It will suffice to say that the case, as made by the complainant, tends to show that the increased rate between East Branch and Weehawken puts upon the commodity in question more of a burden than the traffic can reasonably bear, and tends also to show, if tested by comparison with rates demanded on the same commodity by other carriers in the same territory, that the present rate of the defendant of which complaint is made is unreasonable and excessive. Such testimony, considered in connection with the fact that for years the defendant had voluntarily been content to accept a substantially lower revenue for the same service, seems, under any theory for the trial and disposition of such an issue, fairly to shift to the defendant the burden of justifying the higher rate which it now demands.

But the defense seems to proceed largely on the idea that the increased rate justifies and explains itself. The only proof offered by the defendant consists of the testimony of a single witness, the direct examination of whom is embraced within two typewritten pages of the record. The single point disclosed by his testimony is that during the two or three years prior to the rate increase complained of there had been a growing increase in the cost of labor and in the price of railroad materials and supplies. This is doubtless true. But that fact does not necessarily imply that there has been a decrease



in the net earnings of the defendant during the same period. A material growth in its traffic might readily overcome the increase in the cost of labor and materials and thus leave its net revenues unimpaired. An increase in the cost of labor and materials by no means precludes the possibility even of an increase in its net earnings; for such a result might be effected by a decrease in the cost of operation and other economies resulting from an alert and skillful management. As a matter of fact the annual reports filed by the defendant with the Commission show a progressive decrease during the last five years in the ratio of its operating expenses to its operating revenues, from 74.16 per cent in 1904, to 66.72 per cent in 1908. Moreover, neither an increase in the cost of labor and materials, nor a decrease in its net revenues—and the latter is not asserted by the defendant in this record—is necessarily inconsistent with the possibility that the net earnings of the defendant may still be sufficient to afford it a fair return on the investment without any increase in its rates. On all these very important questions the testimony offered by the defendant is absolutely silent. The increased rate is defended simply and solely on the ground that there has been an increase in the cost of railway labor and supplies.

Something was said by the defendant's witness as to a charge of 15 cents per ton which the defendant is required to pay for the use of the Weehawken terminals. But this charge, which we understand to be in the nature of a trackage rental, the defendant was compelled to pay under the prior rate as well as under the present increased rate, and therefore was not a new item of expense in connection with this traffic. On the cross-examination of the witness some details with respect to the increase in the cost of operation on the defendant's line got into the record. It was then shown that its operating expenses for the year 1907 increased \$411,058.84, or 7.85 per cent, over the operating expenses for the year 1906. A part at least of this increase must have been an absolute and not a proportional increase, for more traffic was hauled by the defendant in 1907 than in 1906, the increase in 1907 over its freight revenues of the prior year being \$736,197.84. This increase during the year 1907 in its gross revenues, it must be observed, was accompanied by a decrease over the prior year of 2.90 per cent in the ratio of operating expenses to operating revenues.

It may be that the defendant is in need of more revenue, but if so the record which it has made in this proceeding fails signally to disclose the fact. The actual need of additional revenue is not even affirmatively asserted in the record in any definite and direct way, much less has it been proved by any testimony offered by the defendant. It is shown, as stated, that there has been a substantial increase in the cost of labor and materials, and on that fact alone is

an effort made to justify the increase in the rates on stone. No importance seems to be attached by the defendant to the substantial increase in 1907 of its freight revenues, or to the substantial decrease in the ratio of its operating expenses to operating revenues, both of which are factors that are not generally accepted as suggestive of a tendency to an increase in rates.

Moreover, the record shows that the defendant endeavored to meet the increase in the cost of labor and materials not by any general revision of its rate schedules but by imposing the burden upon a few commodities only. A table which the defendant prepared at the request of the examiner at the hearing shows increases in rates only on six commodities, namely, brick, charcoal, cord wood, furnace slag, ice, and lumber. These increases are all on intrastate shipments except the increases on charcoal and lumber. The increase on cord wood and ice is to particular destinations, and on lumber from particular points of origin. The increases in rates on brick, charcoal, and furnace slag are general in nature. The class rates and the general commodity rates of the defendant do not seem to have been disturbed, at least not for the purpose of meeting the increase in the cost of labor and materials, so far as the record discloses. It will thus be seen that so far as the defendant has advised us the burden of meeting the increase in the cost of labor and materials has been cast by the defendant upon these few commodities. Without stopping to comment upon this course it may be well to call attention to what we said in this general connection in *The National Hay Asso. v. Lake Shore & Michigan Southern R. R. Co.*, 9 I. C. C. Rep., 264.

The lower rates on stone in effect on other lines from more distant points, the defendant's counsel contends, do not afford a proper test of the reasonableness of its own rates, for the reason (1) that the Lackawanna "has enormous resources" and "no other inference can be drawn than that that company, having unlimited resources, makes rates regardless of cost or reasonable profit whenever it chooses to do so," (2) that "the Erie company for a long time past has been on the verge of bankruptcy, and has defaulted in the payment of its fixed charges," and (3) that the rate of \$1.35 per ton for hauls of 251 and 254 miles on the Lehigh Valley on its face "requires explanation and justification." We do not find these suggestions very conclusive. On the contrary, if the bankruptcy of one road and the prosperity of another and the middle ground which in the view of counsel the third road occupies financially, all lead to lower rates for longer hauls of stone on those lines in the same general territory than are in effect on the lines of the defendant, the mind is at once led to reflect on the probability that the defendant's increased rate on stone between the points in question is too high. And taking the

record as a whole, just as it is laid before us, we think this is shown to be the case. The present rate yields over 1 cent per ton per mile; the former rate gave the defendant a revenue of 9.33 mills per ton per mile. On a commodity of that character that loads heavily the former rate would seem to have given the defendant a reasonable return for the service.

Upon the whole record and in view of the fact that the defendant voluntarily maintained the \$1.40 rate for a number of years and that lines in the same general district now voluntarily maintain even lower rates for still longer hauls, we are led to conclude that the present rate of \$1.60 per net ton is an unreasonable and excessive rate, and that the former rate of \$1.40 per net ton was and now is a normal and reasonable rate for the carriage of stone between the points in question. The defendant will therefore be required to establish and maintain that rate for the future.

It will be so ordered.

15 I. C. C. Rep.

No. 1765.

J. G. FALLS &amp; COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
ET AL.

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*Submitted December 21, 1908. Decided February 1, 1909.*

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1. A carrier's own published tariffs are the measure of its obligations to shippers; it can not be controlled by the terms of the separate tariffs of its connections. Under a local any-quantity rate a shipper has no right to demand a car of a given size; the carrier may use any available equipment, notwithstanding the fact that the separate tariffs of a connecting line provide a minimum weight under a carload rate; and the initial carrier, in the absence of a definite agreement with the shipper as to the size of car to be used is not liable to the shipper for the increased rate charges imposed upon him by reason of the fact that it delivers to the connecting line in two cars a shipment, moving under the two local rates, the weight of which comes within the carload minimum weight provided in the tariffs of the connecting line.
2. The Commission is without authority to enter an order requiring a shipper to make good an undercharge, but shippers must understand their liability under the law for the failure or refusal to pay the published rates.

*J. G. Falls* for complainant.*E. B. Peirce* for Chicago, Rock Island & Pacific Railway Company and St. Louis & San Francisco Railroad Company.

## REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

Apparently on the theory that full relief could be obtained by making complaint against the delivering line to which the freight charges were actually paid, the complainant omitted to bring in as codefendants the St. Louis & San Francisco Railroad Company, the initial carrier, hereinafter referred to as the Frisco, and the Chicago, Burlington & Quincy Railroad Company, an intermediate line that also participated in the movement in question. The nonjoinder was partially cured by counsel for the Frisco who, being present at the hearing, voluntarily entered the appearance of that company, and from the view we take of the record, the petition, we think, may be disposed of without delaying the proceedings in order to make the Burlington a party also.

15 I. C. C. Rep.

The complaint is for reparation, and the facts as well as the point at issue may be stated in a few words: On August 10, 1907, the complainant, J. G. Falls, who is engaged, under the name and style of J. G. Falls & Company, in the business of buying and shipping cotton and cotton linters at Memphis, tendered to the Frisco at Malden, in the state of Missouri, 50 bales of uncompressed cotton linters of the aggregate weight of 22,471 pounds, for transportation to Minneapolis. The bales were delivered by an agent of the complainant at the cotton loading station of the Frisco at Malden. No witness appeared on behalf of either party to testify as to just what was said by the complainant, through his agents at Malden, when the shipment was tendered. It does appear that the complainant by letter had directed his agents to ask for a car large enough to take the entire 50 bales, but whether such a car was in fact demanded does not appear by any competent evidence. We shall assume, however, that such a request was made, and that the Frisco agent at Malden replied by saying that he would supply the largest available car for the shipment. That inference may fairly be drawn from a letter, addressed to the complainant by his agents at Malden, which was offered in evidence.

As a matter of fact two cars were used, one a 40-foot car and the other a 36-foot car. The loading was done by the carrier. It put 30 bales into the 40-foot car, and the remaining 20 bales into the other car. The complainant asserts that with proper skill and care in loading, 50 bales of uncompressed cotton linters can be loaded into a 40-foot car of standard dimensions. The defendant denies that this is possible, but beyond the assertion on the one hand and the denial on the other, the record contains no testimony upon the point. Bales of cotton and cotton linters, as they ordinarily come uncompressed from the gin, vary much in size, and it definitely appears that the 30 bales loaded into the 40-foot car filled it to visible capacity. It also appears that the Frisco, at the time the shipment was tendered by the complainant, did not have on hand at Malden any larger car than the 40-foot car actually supplied for the movement. The bill of lading that was at once delivered to the complainant's agents gave them immediate notice that the shipment had been loaded into two cars, but they took no action of any kind.

The complainant's linters thus went forward in two cars, and the shipment reached destination in that form. There is no joint through rate for the transportation of cotton linters from Malden to Minneapolis, and the charges were therefore assessed at the sum of the local rates based on St. Louis. The local rate from Malden to St. Louis was 25 cents per 100 pounds, while from St. Louis to Minneapolis there was a joint through rate via the Burlington and the Rock Island, of 26

cents per 100 pounds, making a combination rate of 51 cents for the through movement from Malden. Disregarding for the moment a slight error made by the Rock Island in assessing the charges at destination, the point upon which the petitioner bases his claim for an overcharge results from the following rate situation:

The 25-cent rate of the Frisco from Malden to St. Louis was an "any quantity rate." The joint rate of the Burlington and Rock Island from St. Louis to Minneapolis was a carload rate, based on a minimum of 24,000 pounds. The shipment was handed over to the Burlington at St. Louis in two cars, one loaded to its visible capacity, as heretofore stated, and the other partially loaded; the 20 bales in the second car aggregating 8,988 pounds in weight. The Burlington being without special instructions or any notice of the wishes of the consignor or of his plans with respect to the final disposition of the shipment, accepted it in the form in which it was tendered and hauled the two cars to Burlington, where they were delivered to the Rock Island. Upon the arrival of the two cars at Minneapolis the Rock Island assessed the charges from St. Louis on the 40-foot car at the carload rate of 26 cents, based on a minimum of 24,000 pounds as provided in the published tariffs. And under tariff authority to that effect it assessed the charges from St. Louis on the second car at the rate of 26 cents per 100 pounds for the 8,988 pounds which that car contained.

The theory of the petitioner is that if the Frisco had supplied one car large enough to take the entire 50 bales, they would have gone through from St. Louis to destination at the published carload rate on the one car, the total weight of the shipment being within the carload minimum weight provided in the tariffs of the connecting lines, and that he would thus have escaped the charges that he was compelled to pay on the second car. The complainant states that he had previously made similar requests which had been complied with, but whether of the Frisco agent at Malden or not he does not say. Aside from the natural desire of a carrier to comply with the reasonable requests of its shippers, it would doubtless cost it less to use one large car when available instead of two smaller cars. The Frisco must therefore be acquitted of any intentional disregard of the complainant's request, and no such charge is in fact made against it. Assuming that it was aware of the condition of the tariffs of its connections at St. Louis and understood that one car had been requested in order that the complainant's shipment might come within the terms of those tariffs, the question before us then is whether the Frisco was bound as a matter of law to furnish one car to the complainant sufficiently large to hold the 50 bales, and whether, having been unable to do so, it is responsible to the complainant in the

amount of the additional charges that he was compelled to pay on the second car. It is probably true under an any-quantity rate that if the complainant and the Frisco agent had reached an agreement before the shipment was tendered, under which the Frisco undertook to furnish a car large enough to take the 50 bales, the complainant could have held it to the fulfillment of the agreement notwithstanding. Upon that point we make no ruling at this time. But there is no pretense here of any agreement. It was a mere request on the part of the complainant, with which, as the record shows, the Frisco was unable to comply. Does such a request impose any duty on the carrier under such circumstances, even if it be assumed that it has knowledge of the fact that its compliance will save the shipper additional freight charges on connecting lines? Stating the question in another form, Has the shipper under such circumstances the right to demand of a carrier a car large enough to take the shipment offered? We think not. In such matters the carrier's own published tariffs would seem to be the measure of its obligations to shippers. It can not be controlled in its duties to shippers by the terms of the separate tariffs of its connections. One of the benefits, if not one of the objects, of an "any quantity rate" is that it leaves the carrier with some freedom in the use of its equipment. Such a tariff gives the shipper no right to demand a car of a given size. Even if a larger car had been available the carrier was not bound to give it to this complainant for a shipment carrying an "any quantity rate." It might very well be that the larger car would be required by another shipper for the movement of another commodity that could be carried economically only under a carload rate based on a minimum weight. In such case the carrier under its tariffs would seem to be under the necessity of assigning the car to that shipper. While a carrier in accepting a shipment ought to consider the convenience and interests of the shipper, nevertheless, as a matter of law, it is under an obligation only of satisfying the requirements of its own tariffs. It can be called upon to do for shippers only what it offers to do in its own tariffs or in any joint tariffs to which it is properly named as a party. It can not be compelled to meet the requirements of the separate tariffs of its connections.

The obligations of connecting lines with respect to the use of equipment under a joint through rate to which they are parties have been considered by the Commission in *Pacific Purchasing Company v. C. & N. W. Ry. Co.*, 12 I. C. C. Rep., 549, and in other cases. We are here considering only the obligation of the initial carrier in a through movement on local rates, but under a through bill of lading.

15 I. C. C. Rep.

The question may be of more importance than we can now anticipate. We therefore confine the ruling to the particular case in hand, and base it upon the special facts disclosed by the record. All we intend now to hold is that under the circumstances shown of record neither the Frisco nor its connecting lines in handling this shipment were guilty of any unreasonable departure from the ordinary practice of carriers in such matters. The record is wanting in any fact or feature upon which we may lawfully attach to the St. Louis & San Francisco Railroad Company responsibility to the complainant for the additional charges that he was compelled to pay on his shipment, and we see no grounds upon which either the Chicago, Burlington & Quincy Railroad Company or the Chicago, Rock Island & Pacific Railway Company may be said to have been at fault in the premises. The complaint is therefore without merits.

But, as we have intimated, the Chicago, Rock Island & Pacific Railway Company made an error in assessing the freight charges at Minneapolis, although in what is heretofore said we have for convenience referred to the charges as if they had been properly assessed. The amount actually collected was \$136.80, based on a weight of 24,000 pounds at a through rate of 57 cents. For this there was no authority in the published tariffs. The amount that ought to have been collected was \$141.95, arrived at in this way: The 25-cent rate on 22,471 pounds from Malden to St. Louis amounts to \$56.18; beyond St. Louis, the carload rate of 26 cents on the one car that was filled to visible capacity would yield charges, reckoned on the basis of the minimum weight of 24,000 pounds, of \$62.40. The second car contained 8,988 pounds which, as stated, was entitled to take the carload rate of 26 cents, amounting to \$23.37. This would make total charges from St. Louis to Minneapolis of \$85.77. This amount added to the charges from Malden to St. Louis, \$56.18, would make the sum of \$141.95, which is the amount that ought properly to have been collected on the movement. There is therefore an undercharge on the shipment of \$5.15. As the Commission is without authority to enter an order requiring a shipper to make good an undercharge, no order will be entered in this case, but the complainant will of course understand his liability under the law for his failure or refusal to pay the published rates on the shipment.

Let an order be entered dismissing the complaint.



No. 1705.

BEEKMAN LUMBER COMPANY

v.

ST. LOUIS, IRON MOUNTAIN &amp; SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted January 18, 1909. Decided February 1, 1909.*

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The application of the Class B rate of 60 cents per 100 pounds to a movement of rough-sawed tent pins from Gleason, Ark., to Dallas, Tex., puts an unreasonable and excessive burden upon that commodity, and for the future the rate ought not to be more than 1 cent per 100 pounds in excess of the general lumber rate between those points, which at the present time is 20 cents per 100 pounds. Reparation awarded on that basis.

*G. H. Lowry* for complainant.

*Martin L. Clardy* and *James C. Jeffery* for St. Louis, Iron Mountain & Southern Railway Company.

*E. L. Sargent* for Texas & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

On February 10, 1906, the complainant, a corporation engaged at Kansas City, Mo., in the business of manufacturing, buying, and selling lumber, shipped from Gleason, in the state of Arkansas, a local point on the St. Louis, Iron Mountain & Southern Railway, one carload of rough sawed tent pins consigned to the Missouri Tent & Awning Company at Dallas, in the state of Texas. There was no joint through rate then specifically applicable over the lines of the defendants on the commodity in question, and as a consequence the Class B rate of 60 cents per 100 pounds was assessed on the basis of the minimum carload weight of 30,000 pounds prescribed in the published tariffs of the defendants. The charges so made up amounted to \$180. Although the freight was actually paid by the consignee at Dallas, the amount was billed back against the complainant company, and that company is therefore properly before us as the moving party in the proceeding.

The allegation of the complaint is that at the time the shipment was made there was in effect between the points in question, over the lines of the defendants, a rate of 20 cents per 100 pounds on lumber,

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and that any rate on rough sawed tent pins in excess of the general lumber rate is excessive and unreasonable. On that ground the complainant questions the reasonableness of the Class B rate of 60 cents as applied to the movement in question, and demands reparation in the sum of \$120, that being the difference between the general lumber rate and the Class B rate based on the prescribed carload minimum of 30,000 pounds.

All the allegations of the petition are substantially admitted by the defendants in their several answers. It also appears that the invoice price of the shipment in question was \$194.36, upon which the freight charges, as heretofore stated, aggregated the sum of \$180, leaving to the complainant only \$14.36 as its net return for the lumber and the labor involved in roughly sawing a carload of tent pins. While this is by no means conclusive proof of the unreasonableness of the rate, nevertheless a rate that so nearly approaches the value of the shipment is suggestive of error or inadvertence by the defendants in the adjustment of their rate schedules. Such was the case here. Both the defendants intimate that had their attention been called, before the shipment was made, to the omission from their tariffs of a commodity rate on tent pins they would have established such a rate. This they in fact did at a later date. On March 3, 1908, they made effective a general rule providing that rough-sawed tent pins should take a rate of 1 cent per 100 pounds higher than their lumber rates. There is, therefore, in force at this time between the points in question a rate of 21 cents per 100 pounds on tent pins.

Upon these facts our conclusion is that the application of the Class B rate of 60 cents placed an unreasonable and excessive burden upon the complainant for the transportation of a carload of rough-sawed tent pins from Gleason to Dallas. We also find that the rate ought not to have exceeded 21 cents per 100 pounds, and that the complainant is entitled to reparation on that basis, with interest from the date of the payment of the excessive charges at the rate of 6 per cent per annum. We also find that the rate for the future for the carriage of rough-sawed tent pins between the points in question ought not to exceed the general lumber rate by more than 1 cent per 100 pounds.

The defendants, as we understand the record, substantially agree to such an adjustment of the petitioner's claim. One of the defendants, however, by an amended answer, pleads the statute of limitations as a defense to the complaint. On that point it is only necessary to say that although the shipment moved on February 10, 1906, and the freight charges were paid on February 28, 1906, more than two years prior to the presentation of this formal complaint to the Commission on August 26, 1908, nevertheless our records show that the

complaint was informally presented to the Commission under date of January 20, 1908. The provision of the statute is that—

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after.

Construing this provision the Commission recently said in *Folmer & Co. v. G. N. Ry. Co. et al.*, 15 I. C. C. Rep., 33, that the informal presentation of such a claim was sufficient to stop the running of the statute. The plea of the statute of limitation as a bar to the action must therefore be overruled.

The defendants will be required, for the usual period of two years, to maintain the relation above indicated between the general rates on lumber and the rates on rough-sawed tent pins.

An order will be entered giving effect to these conclusions.

15 I. C. C. Rep.

No. 2068.

BOWMAN-KRANZ LUMBER COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

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No. 2075.

BLODGETT MILLING COMPANY

v.

SAME.

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No. 2077.

INTERSTATE IRON & STEEL COMPANY

v.

SAME.

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*Submitted January 22, 1909. Decided February 8, 1909.*

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Complainants are entitled to recover from defendant reparation for unjust and unreasonable charges on specified shipments of various articles under the rates complained of in these cases.

*H. G. Kranz, D. W. Holmes and S. J. Llewellyn* for complainants.  
*William Ellis* for defendant.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

In each of these cases there is a written stipulation filed and signed by the respective parties, agreeing that the case may be determined upon the pleadings and without hearing, the filing of briefs and presentation of arguments being waived by each party. In each case reparation is asked.

CASE No. 2068.

The Commission finds the facts to be that the complainant shipped over defendant's lines on July 23, 1907, from Omaha, Nebr., to Canton, S. Dak., 1 carload of lumber, 54,100 pounds, and was charged and paid \$108.20, being at the rate of 20 cents per 100 pounds.

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At the time there was a tariff of defendant naming the rate of 20 cents per 100 pounds on lumber from Omaha to Canton; also a tariff naming rate on lumber from Council Bluffs to Canton of 9.03 cents per 100 pounds plus \$5 per car bridge charge. Defendant by its tariff effective November 5, 1907, named a rate of 9.03 cents per 100 pounds plus bridge charge of \$5 per car, which is the present rate. Any higher rate on lumber from Omaha to Canton than 9.03 cents per 100 pounds plus \$5 per car bridge charge was and is unreasonable and unjust, and the rate of 9.03 cents per 100 pounds is a reasonable and just rate for the future.

Our conclusion is that complainant is entitled to reparation for the difference between the charge of \$108.20 at 20 cents per 100 pounds, and \$53.83 at 9.03 cents per 100 pounds plus \$5 bridge charge, the difference being \$54.35, and an order will be issued accordingly.

CASE No. 2075.

The Commission finds the facts to be that in August, 1907, complainant shipped over defendant's lines from Janesville, Wis., to Kansas City, Mo., 4 carloads of rye flour and paid charges at the rate of 24.5 cents per 100 pounds, amounting to \$332.36; that previous to June 30, 1907, defendant's tariff named a rate of 13½ cents per 100 pounds on flour and that on September 20, 1907, defendant's tariff restored the 13½-cent rate on flour between the points named, and that any higher rate than that was and is unreasonable and unjust, and that a 13½-cent rate is a reasonable and just rate for the future.

Our conclusion is that the complainant is entitled to reparation in the sum of \$169.88, the difference between the rate charged, 24.5 cents, and the reasonable rate of 13½ cents. An order will be issued accordingly.

CASE No. 2077.

The Commission finds the facts to be that complainant shipped over defendant's lines, during September and October, 1906, from East Chicago, Ind., to Moline, Ill., 14 carloads of iron bars, weighing 992,925 pounds, and was charged and paid a rate of 6 cents per 100 pounds, amounting to \$595.75; that at the times of said shipments there was in effect a rate of 5 cents per 100 pounds between the points named, to which the defendant was a concurring party, and defendant also had a tariff naming rate on iron bars from Chicago, Ill., and Milwaukee, Wis., to points in Illinois and Iowa, including Moline, of 5 cents per 100 pounds, and also another tariff, effective June 25, 1906, showing between stations on defendant's line, including East Chicago, Ind., the same rate as applied between Chicago and stations

15 I. C. C. Rep.

referred to, subject to the minimum of 6 cents per 100 pounds, and there was doubt as to which rate should be applied, and on December 29, 1906, defendant amended its tariff by making the minimum 5 cents per 100 pounds; that any rate on such bar iron more than 5 cents per 100 pounds was and is unjust and unreasonable, and that 5 cents is a just and reasonable rate for the future. The complainant first presented its complaint to the Commission on January 10, 1908.

Our conclusion is that the complainant is entitled to reparation in the sum of \$99.29, and an order will be issued accordingly.

15-I. C. C. Rep.

No. 1533.  
RICHARD GOUGH & COMPANY  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY.

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*Submitted January 12, 1909. Decided February 8, 1909.*

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Upon consideration of the facts and circumstances disclosed by the record; *Held*, That defendant's charges for the storage of brewers' rice at New Orleans, La., are not unreasonable or unjust.

*Theodore Willich* for complainant.

*Blewett Lee* for defendant.

REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

Complainant is a copartnership composed of Richard Gough and Adolph Furmans. The principal place of business of the firm is in New York City. The copartnership, engaged in the importation and sale of brewers' rice, imports rice from European ports and ships it over various transportation lines to destinations in practically all states in the Union.

In November, 1906, there were received at the wharves of defendant at New Orleans on complainant's account 2,993 sacks of brewers' rice, which were subsequently shipped over defendant's lines to various points between December 24, 1906, and June 1, 1907. On February 8, 1907, another shipment of 1,998 sacks was received, which was shipped out between May 3, 1907, and June 15, 1907. At the time these shipments were received defendant had in effect a storage tariff which provided that for the first ten days after forty-eight hours' free time limit a charge would be made of 1 cent per 100 pounds and for each additional ten days or fraction thereof  $\frac{1}{2}$  of a cent per 100 pounds. It is alleged in the complaint that this storage charge is unreasonable and unjust.

The controversy arises over storage charges upon the rice which remained from one to about six months in a warehouse on the wharves of defendant and was ultimately delivered to various points reached

15 I. C. C. Rep.

by defendant's lines. Complainant alleges that by reason of such excessive charges it has been damaged in the sum of \$533.79, for which reparation is asked. The defendant, on the other hand, asserts that the storage charges are, under the circumstances, reasonable and just and that there is an unpaid balance of \$845.38 due it. It was agreed between the parties hereto that the case would be submitted to the Commission in order that a determination of the reasonableness of the charge might be had.

The wharf at which the rice was landed extends longitudinally along the Mississippi River a distance of 4,737 feet. Upon this wharf are sheds with tarpaulin drop curtains, the railroad tracks running alongside the freight houses on both sides. The first shipment of rice was landed at the upper end of the dock and was loaded into 13 cars and switched to Warehouse No. 30 at the lower end of the dock, a distance of about 3,000 feet, and there unloaded and held in the warehouse awaiting shipping orders. The rice was handled by hand labor with the use of trucks and was stored in a brick warehouse with cement floor and concrete roof. The building was fireproof and of a character suitable to preserve the rice from the elements. The other shipment was landed near the lower end of the wharf and was trucked by hand from the wharves to the warehouse, a distance of about 300 feet. When the rice was shipped out it had to be handled by hand, put upon trucks, loaded into cars, piled, and checked. No switching charge was made for either movement and there was no charge for labor in handling the rice throughout the entire transaction. The storage included all charges for receipt and handling by defendant. The rice was gradually shipped out after the expiration of several months, some of it remaining in storage about six months. It is put up in bags which average 240 pounds in weight and sells for about \$5 per sack.

The storage rates here involved have been in effect more than ten years, are contained in published tariffs of defendant, and are the same rates which are charged for similar service by all railroads reaching New Orleans. It is contended by the defendant that a consideration of importance is that the shipper by storing his goods with the railroad company obtains the benefit of import proportional rates which are much lower than the local rates from New Orleans to points of ultimate destination; that complainant's rice was insured the benefit of these rates, and the ultimate destination of the commodity was not declared until after it was put in storage at New Orleans; that the low import proportional rates obtaining from that port induced the shipment of the rice via New Orleans; and that if the rice had been stored in a private warehouse and gone out of the possession of the railroad company it would have taken the higher local rates from



New Orleans to destination, which would have entailed a higher total charge to complainant.

From a statement introduced in evidence it appears that these charges are not in excess of and are generally lower than the charges at points reached by the defendant from New Orleans and at stations other than New Orleans.

These charges are as follows:

Alabama Demurrage & Storage Bureau: Free time, forty-eight hours; carload storage, 10 cents per ton of 2,000 pounds per day, but not exceeding \$1 per day per carload.

Storage rules applicable at points in Kentucky: Free time, forty-eight hours; storage, 5 cents per ton of 2,000 pounds per day.

Nashville Car Service Association: Free time, forty-eight hours; carload storage, 10 cents per ton of 2,000 pounds per day, but not exceeding \$1 per carload per day.

Southern Demurrage & Storage Bureau, at New Orleans: Export freight, ten days free time; coastwise freight, five days free time; other freight forty-eight hours free time; storage, 1 cent per 100 pounds for the first ten days or fraction thereof, and  $\frac{1}{2}$  cent per 100 pounds for each additional ten days or fraction thereof.

In Alabama: Free time dependent upon distance consignees reside from the railroad station; storage, 1 cent per 100 pounds per day, and not more than \$1 per carload per day.

In Mississippi: Free time dependent upon distance consignees reside from railroad station; carload storage, 10 cents per ton of 2,000 pounds per day, not exceeding \$1 per carload per day.

In Louisiana: Free time dependent upon distance consignees reside from railroad station; carload storage charge, 10 cents per ton of 2,000 pounds per day.

Chicago Demurrage Bureau: Forty-eight hours free time; storage charge, 5 cents per ton per day.

Illinois & Iowa Demurrage Bureau: Forty-eight hours free time; storage charge, 5 cents per ton per day.

Indiana Car Service Association: Forty-eight hours free time; storage charge, 5 cents per ton per day.

Western Demurrage Bureau: Forty-eight hours free time; storage charge, 5 cents per ton per day.

Central Demurrage & Storage Bureau: Two days free time; storage charge, 5 cents per ton per day.

It is pointed out by complainant that the usual public warehouse charges in force at New Orleans and throughout the country are less than the charges imposed by the defendant. When it is considered that the charges in question were made upon rice that was stored at the wharves of the railway company and could be transported therefrom at the proportional import rate, we do not believe that these storage charges were unreasonable or unjust. It is contended by complainant that it had no knowledge of what the charges were to be at New Orleans. This we can not assume to be so for the reason that the charges were duly published in the tariffs of defendant. In the case of *Blackman v. Southern Ry. Co.*, 10 I. C. C. Rep., 352, the Commission had under consideration charges imposed by

15 I. C. C. Rep.

the Southeastern Car Service Association fixing storage charges for time periods beyond the free time limit. In the course of its opinion the Commission said:

We can not agree with the contention of the complainant in this case that the defendants had no right to charge for the storage of the freight in question more than the usual public warehouse charge in force at Macon, Ga., and Columbia, S. C.

A railroad freight depot and a public storage warehouse are buildings whose business and uses are wholly dissimilar. The former is planned and built to accommodate the current business of the railroad when expeditiously handled, and affords no facilities for storage during long periods of time. The storage warehouse is especially designed for storage purposes. The railway company imposes storage charges, not for gain especially, but in order that it may be enabled to clear its depots, to the end that current business may not be blockaded. That this object may be effected it is, in our view of the matter, justifiable and necessary to impose a rate higher than that fixed by the public storage warehouse, and if this was not done there would be no inducement for the removal of goods from the depot to the public warehouse. The business public is as much interested as the railroad in having goods removed from cars and depots within a reasonable time after they reach their destination.

The terminal facilities of the defendant at New Orleans, known by the general name of "Stuyvesant Docks," cover the entire distance of about 3 miles along the river front, and are used solely for the transfer from ship to car or vice versa of various commodities for import and export.

We are unable to find that the charges imposed under this tariff are unreasonable and unjust in consideration of all the circumstances shown, either as compared with charges made at other points on the line of the defendant or elsewhere, or in and of themselves. It follows that the claim for reparation must be denied and the complaint dismissed.

An order will be entered accordingly.

15 I. C. C. Rep.

No. 1816.  
**LINDSAY BROTHERS**  
*v.*  
**LAKE SHORE & MICHIGAN SOUTHERN RAILWAY  
COMPANY ET AL.**

*Submitted February 12, 1909. Decided February 12, 1909.*

Joint through rates of \$1.49 per 100 pounds, applied by defendants on shipments of steel tanks, L. C. L., from Goshen, Ind., to Sullivan and Sheboygan, Wis., were excessive and ought not to have exceeded the present combination of locals of 97 cents per 100 pounds to Sullivan and \$1.01 to Sheboygan. Reparation awarded on that basis with interest at 6 per cent, and defendants required to maintain the lower rates for a period of two years.

*H. F. Lindsay* for complainant.

*R. J. Cary* for Lake Shore & Michigan Southern Railway Company.

*S. A. Lynde* for Chicago & Northwestern Railway Company.

REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

January 4, 1907, the complainant firm made a shipment of 190 pounds of steel tanks from Goshen, Ind., to Sullivan, Wis., over the lines of the defendants. A rate of \$1.49 per 100 pounds was assessed and collected, that being the established joint rate. The combination of locals on Waukesha at that time was 97 cents, making a difference of 99 cents between the amount which the complainant paid and the amount which it should have paid upon the combination.

On January 25, 1907, the complainant made a second shipment of 460 pounds of steel tanks from Goshen, Ind., to Sheboygan, Wis., over the lines of the defendants, upon which the joint through rate of \$1.49 was also assessed and paid. The combination on Milwaukee was at that time \$1.01, making a difference of \$2.20 between the amount actually paid by the complainant and the amount which would have been paid had the combination rate been assessed.

This complaint is brought to recover the foregoing amounts. The defendants admit that the rates collected were excessive by the amounts above named, and we so find upon that admission. They state that under the old form of constructing and applying tariffs

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the lower combination would as a matter of course have been accorded to the complainant upon these shipments and that the through rate was only collected because the regulations imposed by this Commission require it. They further state that they are, as rapidly as possible, checking over their tariffs with a view to eliminating all cases in which the through rate exceeds the local combination, but that at the time of these shipments these particular rates had not been so revised. They insist, however, with much earnestness that this complainant should not be awarded reparation in this trivial amount; that he should have called the attention of the initial line to the fact that the through rate was higher than the combination and have had this corrected before the shipment moved.

This Commission certainly ought not to be annoyed with formal complaints involving an insignificant amount like this when no principle is at stake; but upon what ground can we decline to award reparation if the complainant sees fit so to ask? It paid the excessive rate. This the defendants admit. It is complainant's right to apply to this Commission for an order of reparation, and if it elects to do so it is our duty to make the order.

Such cases should be dealt with upon our informal docket. The shipper should make his claim upon the carrier and the carrier should promptly apply for leave to refund, which would be granted as a matter of course. The complainant insists that in this case it did apply to the North Western and that it was only when the claim was about to outlaw that this complaint was filed. If this be so the complainant had no other course open than to file this formal complaint or lose the amount altogether. There is no good reason why carriers should not more promptly dispose of claims of this nature as above.

We are of the opinion that the through rates upon this commodity, in less than carload lots, from Goshen to Sheboygan and Sullivan, of \$1.01 and 97 cents per 100 pounds, respectively, would be reasonable to be applied for the future.

An order awarding reparation in the above sums with interest at the rate of 6 per cent per annum from February 1, 1907, will be entered, and the defendants will be further required to maintain the above rates for a period of two years.

15 I. C. C. Rep.

No. 1381.

BLACK MOUNTAIN COAL LAND COMPANY ET AL.

v.

SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted October 20, 1908. Decided February 8, 1909.*

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1. The charge of 10 cents more per ton upon shipments of coal in carloads from the Black Mountain coal district, in the state of Virginia, than from the Appalachia district, in the same state, to Morristown, Tenn., and all points east and south thereof on defendants' lines, is unjust and unreasonable.
2. The rates from the Appalachia coal district in Virginia, including the Black Mountain coal district, which exceed by 25 cents the rate from Coal Creek to all points on defendants' lines east and south of Morristown, Tenn., as far south as Charleston, S. C., and Augusta, Ga., unduly discriminate against the Black Mountain and Appalachia operators and unduly prefer Coal Creek operators.
3. For reasons appearing in the decision the Commission does not attempt to determine whether the 10-cent differential applied to Toms Creek over Appalachia is or is not unreasonable.
4. A carrier can not lawfully so group its mines with respect of rates as to unduly discriminate against any locality. The duty imposed by law is to give equal treatment to all shippers who are in position to demand it, and this includes the right to reach competitive markets on relatively equal terms.
5. Carriers are not required by law, and could not in justice be required, to equalize natural disadvantages, such as location, cost of production, and the like. Where, however, the same carrier serves two districts which, by their location, the character of their output, and distance from markets where their product must be disposed of are in substantially similar circumstances and conditions, the serving carrier can not lawfully prefer one to the other in any manner whatsoever.

*E. K. Bachman, Archer A. Plegar, and William A. Glasgow, jr., for complainant.*

*C. B. Northrop for Southern Railway Company.*

*J. F. Bullitt and D. D. Hull, jr., for Virginia & Southwestern Railway Company and Black Mountain Railway Company.*

#### REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

This complaint is brought by the Black Mountain Coal Land Company, which owns a large body of coal land in what is known as the "pocket" country, in Lee County, Va., by certain lessees of that company, and by two independent operators in the same region.

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Coal produced in the district in which the lands and mines of complainants are situated is sold in the States of North and South Carolina and points south thereof in competition with coal produced in the Pocahontas, Toms Creek, and Appalachia districts of Virginia, with coal from Coal Creek, Jellico, Wilder, and other districts in southern Kentucky and eastern Tennessee, and to a lesser extent with Birmingham and other Alabama coals. The Toms Creek, Appalachia, and Black Mountain districts are situated on Black Mountain near the line between the states of Virginia and Kentucky and are divided for rate-making purposes into two groups. Group 1 comprises the Appalachia district, and group 2 includes two detached districts—one, Toms Creek, which adjoins group 1 on the east, and the other, Black Mountain, which adjoins group 1 on the west. The Black Mountain district includes territory embraced by the North Fork of Powells River and extends from the ridge which divides it from the Appalachia district on the east to the headwaters of Stone Creek on the west, a distance of about 20 miles. The Appalachia district extends from the ridge on the west which divides it from the Black Mountain district to the upper Guest River watershed on the east, a distance of about 17 miles. The Toms Creek district extends east of the ridge which divides it from the Appalachia district for a distance of about 20 miles.

Intermont, situated about the center and near the southern boundary line of the Appalachia district, is the junction point of the Virginia & Southwestern, Black Mountain, and Louisville & Nashville railroads and is the gateway through which all coal from groups 1 and 2 passes when consigned to Tennessee and southeastern points over the defendant lines. The line of the Louisville & Nashville extending from Middlesboro, Tenn., to Norton, Va., passes about 3 miles south of the Black Mountain and Appalachia districts and touches the Toms Creek district at Norton. Some time prior to September, 1905, the Louisville & Nashville built a spur about 3 miles long from Pennington, Va., to the southerly line of the Black Mountain district. The Black Mountain Coal Land Company thereafter constructed a railroad about 7 miles long from a connection with this spur to the mines of the district. Coal shipped from the Black Mountain fields to points on and reached by the Virginia & Southwestern was transported by the Black Mountain Railway to Pennington—the Black Mountain Company operating over the Louisville & Nashville spur—thence about 20 miles over the Louisville & Nashville to Intermont; thence over the Virginia & Southwestern to Bluff City, Tenn.; and thence over the Southern via Morristown, Tenn., and Asheville, N. C., to Carolina points. The rate charged the Black Mountain operators was 25 cents per ton in excess of

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the rate from the Appalachia mines to the same destination points over the same route. Shipments from the Black Mountain district to the west are handled by the Black Mountain Railway to Pennington, for which service it receives 5 cents per ton from the shipper and 3 cents per ton from the Louisville & Nashville. From Pennington and Appalachia the rates are the same to western destinations.

September 20, 1905, the Coal Land Company sold the Black Mountain Railway to the Virginia & Southwestern under a contract which provided that the latter should cause to be constructed within two years a railroad from some point on the Black Mountain road to a connection with the main line of the purchasing company. There was also a provision in the contract whereby, on and after the completion of this extension, the Virginia & Southwestern guaranteed the Black Mountain Coal Land Company and its lessees, on coal from points on the Black Mountain Railway routed via the Virginia & Southwestern to Bristol, Tenn., and points south and east thereof as well as to all points on the Virginia & Southwestern, a rate not exceeding 10 cents per ton above the rate from mines in the Appalachia district over the same route and to the same destinations. The new line was completed about December 9, 1907, to a connection with the Virginia & Southwestern at Intermont, making the total length of the road some 25 miles.

In May, 1906, the Southern Railway Company acquired the stock of the Virginia & Southwestern and now owns and controls that road as well as the Black Mountain Railway. The questions presented by this record are therefore to be considered with respect of their relations to the Southern system.

The Southern reaches the Toms Creek district over the rails of the Louisville & Nashville and Norfolk & Western under trackage contracts which had been made with the Virginia & Southwestern. Over lines to the north from Knoxville, Tenn., the Southern reaches the Middlesboro (Ky.), Jellico, and Coal Creek (Tenn.) districts. Coal when destined to most Carolina points over the Southern from these districts passes through Morristown.

It is alleged in the complaint, in substance and effect, (1) that the charge of 10 cents more per ton on shipments of coal from Black Mountain to most of the Carolina territory than is charged from the Appalachia district is unreasonable and unjust, and (2) that the existing adjustment of rates on shipments from the Jellico, Coal Creek, Middlesboro, and Wilder districts to points in Carolina territory and south thereof, when compared with rates from Appalachia, Toms Creek, and Black Mountain, is unreasonable, unjust, and unduly discriminatory in favor of the former districts.

Rates to Morristown from these coal fields, the short distances by defendant lines, and the rates per ton per mile are as follows:

District.	Average distance.	Rate per ton.	Rate per ton per mile.
	<i>Miles.</i>		<i>Miles.</i>
Wilder.....	145	\$1.05	7.0
Jellico.....	107	.90	8.0
Coal Creek.....	73	.90	12.0
Middlesboro.....	111	1.00	9.0
Black Mountain.....	170	1.30	7.6
Appalachia.....	159	1.20	7.5
Toms Creek.....	170	1.30	7.6

The Pocahontas coal district in southwest Virginia, east and north of Toms Creek, is reached by the Norfolk & Western. The Toms Creek district is reached by the Norfolk & Western via Norton. Shipments of coal to Carolina territory from Pocahontas and Toms Creek are made over the Norfolk & Western to Roanoke, Va., and thence to Winston-Salem, N. C., where they are turned over to the Southern, or Lynchburg, Va., and thence to Durham, N. C., where they are turned over to the Southern or to the Seaboard Air Line. Rates from Toms Creek are 10 cents per ton higher than from Pocahontas. Pocahontas coal is a superior steam coal and appears to command about 35 cents per ton more in consuming markets than coals from any of the districts under consideration. So far as can be ascertained from the record it would seem that the coals produced in the Appalachia and Black Mountain districts are of about the same character as coals produced in the Coal Creek, Jellico, and Wilder districts and command substantially the same prices in competitive markets. Certain of the Jellico coals are superior for domestic use and certain of the Black Mountain and Appalachia coals for steam purposes, and the Black Mountain coal appears to be well adapted to domestic use. On the whole we find that the difference between the coals produced in these different fields is not so marked as to be worthy of special consideration in determining the rate adjustment. It does not appear that Middlesboro coal enters into competition with the Black Mountain or Appalachia coal to any considerable extent, very little of it finding its way to consuming points in Carolina territory.

Carolina territory, so called in rate-making, includes that territory which extends north and east of a line drawn from Wilmington, N. C., via the Atlantic Coast Line to Columbia, S. C.; thence via the Southern Railway to Alston, Newberry, Greenwood, Abbeville, Belton, Anderson, and Seneca, to Walhalla, S. C. The testimony relates chiefly to Carolina territory, which appears to be the natural market for the sale of Black Mountain and Appalachia coal. Complaint is



made, however, of the existing adjustment of rates to southeastern points as far south as Augusta, Ga., and Charleston, S. C. A comparison of rates, distances, and rates per ton per mile from the Black Mountain, Wilder, and Coal Creek districts to certain common points is shown by the following table:

From—	Distance.	Rate per ton.	Rate per ton per mile
	<i>Miles.</i>		<i>Miles.</i>
Black Mountain to—			
Spartanburg, S. C. ....	336	\$2.15	6.30
Columbia, S. C. ....	430	2.45	5.69
Augusta, Ga. ....	512	2.40	4.68
Charleston, S. C. ....	559	2.15	3.84
Wilder to—			
Spartanburg. ....	309	2.00	6.47
Columbia. ....	396	2.25	5.68
Augusta. ....	464	2.10	4.52
Charleston. ....	526	1.80	3.42
Coal Creek to—			
Spartanburg. ....	220	1.85	8
Columbia. ....	324	2.10	6.48
Augusta. ....	363	2.10	5.78
Charleston. ....	453	1.80	3.97

Rates to Carolina territory and points south as far as Charleston are made from the coal fields in question on the group plan—that is to say, the rate to a particular point from any one of the districts is applicable to a number of other points within the same group area. Rates to the first group, including Goldsboro, Raleigh, Sanford, Greensboro, Norwood, and Wilkesboro, N. C., intermediate points and points north and east thereof, are as follows:

From—	Rate per ton.
Pocahontas district. ....	\$2.30
Coal Creek district. ....	2.35
Appalachia district. ....	2.50
Black Mountain district. ....	2.55
	2.75

The second group embraces points south of the above-described territory, including Charlotte, N. C., Lancaster, Camden, Sumter, Columbia, Trenton, and Warrensville, S. C., Augusta, Ga., and intermediate points. To this group rates from Pocahontas, Toms Creek, Appalachia, and Black Mountain are the same, ranging from \$2.45 to \$2.50 per ton. Rates from Coal Creek to this territory are 35 cents per ton lower, and from Wilder 20 cents lower.

The third group includes points west of Statesville, N. C., and Chester, S. C., as far as Spartanburg, Asheville, and intermediate points. To these points the Pocahontas rate is 55 cents or more above Coal Creek. Differentials to this group are also applied to points south of Columbia, S. C., including Charleston, Branchville,

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Blackville, Warrentonville, and intermediate points. The Pocahontas rate to these points is 35 cents above the Coal Creek rate. The Appalachia rate to most of this territory is 25 cents over the Coal Creek rate and 10 cents over the Wilder rate.

Points west of Alston and Spartanburg, S. C., and Asheville, N. C., as far as Murphy, N. C., and Atlanta, Ga., including intermediate points, form the fourth group, and rates from Coal Creek are 20 cents per ton less than from Appalachia.

It is insisted by complainants that the differential of 10 cents, Black Mountain and Toms Creek over Appalachia, is unreasonable and unjust. It is clear, however, that Toms Creek is not in the same situation as Black Mountain and that a differential which is unjust to the latter may not be unjust to the former. As to that we express no opinion. The Southern does not reach Toms Creek over its own rails, and the coal from that district has an outlet to the first group of the Carolina territory at rates 30 cents above the Coal Creek rate. So far as appears, Toms Creek operators are not complaining of the present adjustment, and it is therefore to be presumed that they are reasonably satisfied with it. Conditions of traffic from Toms Creek to Intermont, the cost of mining, and the character of the coal when compared with Appalachia and Black Mountain do not fully appear. For this reason we do not attempt to determine whether the 10-cent differential applied to Toms Creek over Appalachia is or is not unreasonable.

The situation is somewhat different with the Black Mountain district. The evidence does not show that coal from this district has any other available market than points to the southeast. Shipments to the west over the Louisville & Nashville meet the competition of mines nearer consuming markets and prices obtainable are not remunerative. It also appears that the short-line distance from the Black Mountain district to Morristown would be to Pennington over the Southern, thence via the Louisville & Nashville to a connection with the Southern at Middlesboro, and thence to Morristown. The distance by this route is 153 miles, but it appears to be a rather impracticable route by reason of its poor physical condition. It is not contended by complainants that the Southern should be required to route its shipments from Black Mountain via this line, but it is argued that the Black Mountain mines are entitled to have the short-line distance considered in determining whether they should pay a 10-cent higher rate than Appalachia.

The argument is made by defendants that operators in the Black Mountain district began mining with knowledge of a 10-cent or higher differential over Appalachia, and that this is evidence that they considered the 10-cent differential to be reasonable. It is not contended that the contract respecting this differential is binding

on the Commission. On the contrary, it is admitted that the reasonableness of the freight charge in question is to be determined from considerations independent of the contract. Conditions, however, have changed materially since this contract was entered into. The road with which it was made has been merged into the Southern system. What might perhaps have been proper as between separate companies operating separate and distinct short lines may become unreasonable and unjust when both are absorbed by a large system which serves an extensive territory. It is insisted that the 10-cent differential does not meet the cost of service from the Black Mountain mines to Intermont; that the haul from these mines is up grade, necessitating short trains of small tonnage. The Black Mountain road is new and only about 25 miles long, and if all the terminal, switching, and yard expenses are to be charged to that division of the Southern system it would very likely show a loss even under a higher differential. In point of fact, as its proportion of the through rate, the Black Mountain Railway has been allowed 20 cents per ton and even then, it is asserted, has not paid operating expenses. When the Virginia & Southwestern was operated as a separate company it was allowed from 50 to 60 cents out of the through rate as its proportion. Coal was then delivered to the Southern at Bluff City. The distance from Intermont to the latter point is 81 miles, thus yielding 6 to 7 mills per ton per mile. The president of the Virginia & Southwestern testified that the business at this rate proved profitable. The Southern now receives the whole rate from Intermont to point of destination. While on a haul of 170 miles to Morristown the 10 cents per ton for the additional haul on the Black Mountain road might not be excessive, it is to be remembered that the coal finds its market from 250 to 500 miles distant and that the whole mileage over the line of one carrier is fairly to be charged with its due percentage of the expense incurred in originating the traffic. The Black Mountain and Appalachia coal is of practically the same character and must find a sale at the same points at about the same price. Coal is sold on close margin and 10 cents per ton as an additional charge may become a serious handicap to successful business operations.

In behalf of defendants it is argued that mines are grouped with reference to local conditions and on what appear to be reasonable grounds at the time the grouping is made; that there is no uniformity in grouping, and that there are no two sections where the difference in rates and the difference in distance correspond with each other. However this may be, a carrier can not lawfully so group its mines with respect of rates as to unduly discriminate against any locality. The duty imposed by law is to give equal treatment to all shippers who are in position to demand it, and this includes the

right to reach competitive markets on relatively equal terms. Carriers are not required by law, and could not in justice be required, to equalize natural disadvantages, such as location, cost of production, and the like. Where, however, the same carrier serves two districts which, by their location, the character of their output, and distance from markets where their product must be disposed of, are in substantially similar circumstances and conditions, the serving carrier can not lawfully prefer one to the other in any manner whatsoever. It further appears that coal from the mines of the Appalachia district is delivered at Intermont by the Interstate Railroad, a separate corporation, for which service 10 cents per ton is paid by the Southern Company, and the Appalachia operator pays the Intermont rate for all shipments to southeastern points reached by the Southern. Under all the circumstances we find that the exaction of 10 cents per ton from the Black Mountain operator for transporting his coal to Intermont for delivery to points in Carolina territory is unreasonable and unjust, and that all things considered rates from the Black Mountain mines should not exceed those from Appalachia to the same destinations.

Turning now to the question of rates on coal to Carolina points from Black Mountain and Appalachia, as compared with rates to the same points from the Tennessee fields, it may be observed that complainants make no charge that the rates in controversy are unreasonable *per se*; the real contention is that they are relatively unjust because of the lower rates enjoyed by competing producers. For this reason nothing herein said or decided will preclude the further consideration of the intrinsic reasonableness of any of these coal rates in a proper proceeding.

When coal from either of the districts in question reaches Morristown, the transportation conditions from that point to destination are exactly similar. It is admitted by defendants that no reason exists for exceeding at any point beyond Morristown the proper differential to that junction, except the competition which it is insisted has brought about the present adjustment. So far as the coal produced in the various districts under consideration competes in the markets south and east of Morristown it must all compete under substantially similar circumstances and conditions. It is of the same general character, of practically the same value, used for the same purpose and sold in the same markets. This being so, we are unable to see why the differential at Morristown over Coal Creek should be exceeded at points beyond. The defendants insist that the present rate adjustment was put into effect in 1904, before the Black Mountain district became a factor in the situation; that rates were made with reference to competition between Pocahontas and Tennessee coals, and that rates from the other Tennessee fields in question were

made differentials above Coal Creek to all the consuming territory without reference to the relation of rates from these fields to Morristown. It was stated that the first rate adjustment to Carolina territory and points south thereof was put into effect some time in 1897. At that time Appalachia and Black Mountain coal was not produced, and the competition was entirely between Pocahontas coal from the Norfolk & Western and New River coal from the Chesapeake & Ohio with coal from the Tennessee districts, and the adjustment was made with reference to that competition. The completion of the Black Mountain road brought actively into the consuming territory new districts of supply and sharp competition between these new districts and the Tennessee coal. This change in the situation fairly required, as it seems to us, a readjustment of rates which would take into proper account the new operations. It is urged by defendants that any readjustment of rates which puts the Black Mountain and Appalachia districts nearer on a parity with Coal Creek and Wilder would result in a reduction of rates by the Norfolk & Western and Chesapeake & Ohio to group destinations 1 and 2, hereinbefore described. It is difficult to see how a readjustment of the rates from Black Mountain and Appalachia so as to allow coal produced there to be sold in the groups mentioned would require a reduction from the Pocahontas and the New River districts. Neither the Norfolk & Western nor the Chesapeake & Ohio would seem to be concerned in any degree with the question whether competition with their coal comes from the Tennessee or the southwest Virginia districts. Pocahontas coal at the same rates would command the market because of its superior quality, and even a substantial reduction of the rate from the Tennessee and southwest Virginia mines would not, it is believed, interfere with the sale of Pocahontas coal to any serious extent. The complaint is that the present rate adjustment unduly discriminates against Black Mountain and Appalachia and in favor of Coal Creek and neighboring districts. It is with that question we have to deal, and while it is proper to consider the effect of our decision upon the general rate adjustment applying over a wide scope of territory we must hold that rates which discriminate against one locality on a particular road can not be justified on the ground that they are part of a general scheme adopted by several roads entering the same territory and supplying coal from different and unassociated districts. Every locality competing in a common market is entitled to rates which are relatively reasonable and just in comparison with rates from other localities served by the same carrier.

The average distance from Appalachia and Black Mountain to Morristown is 164 miles, which is about 21 miles greater than from Wilder and about 90 miles greater than from Coal Creek. Under the present adjustment the rate from Appalachia to Morristown is 30 cents per

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ton more than from Coal Creek and 15 cents per ton more than from Wilder.

Complainant insists that the rate from Appalachia should not exceed the rate from Wilder, but with this contention we are not able to agree. It is argued that so far as the average distances to consuming points are concerned Wilder and Appalachia are nearly on a parity. While this may be admitted, it is well established that rates are not made with respect of distance alone. Differences in cost of service to the carrier, value of service to the shipper, and questions of competition in the selling market should also be taken into consideration. The evidence does not show that Wilder and Appalachia coals are active competitors in the Carolina territory, certainly not to the same extent as Coal Creek and Jellico. Wilder operators find a market for a large part of their coal at Chattanooga and Atlanta via the short line. The comparison is to be made with districts which are actively competitive in the same market, and we do not find that the application of the Wilder rates to Appalachia should be required.

Complainants urge that as practically all the coal from Appalachia and Coal Creek on its way to Carolina territory passes Asheville as well as Morristown, the differential at Asheville represents the difference in cost of service and distance between the respective districts. The Asheville rate was put into effect for the purpose of giving Appalachia coal an outlet to the southeast over the Virginia and Southwestern, and Southern. The circumstances surrounding the making of this rate were considered compelling by the Southern. It is insisted by the latter that the rate to Asheville and to points taking the same rate is unreasonably low and not a fair measure of the differential that should be applied to Appalachia over Coal Creek.

There are many elements to be taken into account in determining the question of the proper relation of rates between these districts. Coal Creek operators are not parties to this proceeding. We are therefore not fully advised what effect any readjustment in the relation of rates between Coal Creek mines and those of the Appalachia district may have upon the interests of the former. So far as appears Appalachia operators are not complaining. Tables submitted in evidence show that there is a fairly free and steadily increasing movement from Appalachia mines proper to points in Carolina territory under the existing adjustment. It is our duty so far as possible to determine this question upon a basis which will permit the various districts to compete in common markets under circumstances which their location and conditions of production fairly entitle them with respect of their relation one to the other. We are bound to consider whether any contemplated readjustment will result in serious impairment of business investments or undue depreciation in the revenues of the carrier.

The distance from Intermont to Bristol, Tenn., on the line to Morristown is about 70 miles. An engine has to make about 100 miles to cover the distance, because three trips are necessary to take an ordinary freight train over Walker Mountain. The maximum grade over this division is 179 feet to the mile, with numerous sharp and reverse curves. The maximum grade from Coal Creek to Morristown is 114 feet to the mile. The expense as a whole in assembling the coal at Intermont is very great, and it is not shown that a similar expense is borne at Coal Creek. We have found that the 10-cent differential, Black Mountain over Appalachia, should be eliminated. This places the Appalachia and Black Mountain mines on an equality so far as rates to destinations are concerned. Taking into account the greater average distance from the Appalachia and Black Mountain mines to Morristown as compared with the distance from Coal Creek to the same point, and the higher operating expenses in originating the traffic and on the line from Intermont to Morristown, together with the relation that this district bears to Coal Creek and other districts competing in the same consuming markets, there appears to be no doubt that a materially higher charge on Appalachia coal to the destination points in question is justified than from Coal Creek. Considering that interests quite likely to be affected by a readjustment of rates are not before us and that there have been no complaints so far as appears from Appalachia operators, we are of opinion that under all the circumstances a reduction of only 5 cents per ton in the differential applied on Appalachia coal to Morristown over the rate from Coal Creek to the same points should now be required. And we therefore find that rates from Appalachia, including Black Mountain, which exceed 25 cents above the rate from Coal Creek to all points east and south of Morristown in Carolina territory and as far south as Charleston and Augusta unduly discriminate against the Black Mountain and Appalachia operators and unduly prefer Coal Creek operators in violation of the third section of the act and are therefore unlawful. A readjustment on this basis would reduce the existing differentials of Black Mountain and Appalachia over Coal Creek 15 and 5 cents per ton respectively.

It is a rule of well-nigh universal application that as distance increases difference in distance becomes relatively less important. The differential that we have found to be proper at Morristown—Appalachia and Black Mountain over Coal Creek—should not be exceeded at any destination point beyond in the territory here in question.

An order will be entered in accordance with the conclusions reached above.

No. 1716.

## MICHIGAN BUGGY COMPANY

v.

## GRAND RAPIDS &amp; INDIANA RAILWAY COMPANY ET AL

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*Submitted January 2, 1909. Decided February 8, 1909.*

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1. A joint through rate higher than the sum of the local rates of the same carriers via the same route found to be unreasonable. Reparation awarded.
2. As the defendant carriers have a right to increase their separate local rates, an order that the joint through rate may not, for a stated period, exceed the sum of the local rates could, by such increase in local rates, be made ineffective. Specific rate prescribed.

*Charles E. Stuart* for complainant.

*G. W. Kretzinger* for Grand Trunk Western Railway Company.

*James H. Campbell* for Grand Rapids & Indiana Railway Company and Lake Shore & Michigan Southern Railway Company.

*F. J. Jerome* for Lake Shore & Michigan Southern Railway Company.

*E. B. Peirce* and *M. L. Bell* for Chicago, Rock Island & Pacific Railway Company.

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On November 22, 1906, the complainant, a corporation engaged in the manufacture and sale of vehicles at Kalamazoo, Mich., shipped a carload of vehicles (cutters) from Kalamazoo to St. Paul, Minn., via the Grand Rapids & Indiana Railway, the Grand Trunk Western Railway, and the Chicago, Rock Island & Pacific Railway, and on November 26, 1906, made a similar shipment between the same points via the Lake Shore & Michigan Southern Railway and the Chicago, Rock Island & Pacific Railway, on which defendants, all common carriers amenable to the provisions of the act to regulate commerce, charged at the rate of 49.5 cents per 100 pounds. It is alleged that said rate is unjust and unreasonable to the extent that it exceeds 33.5 cents, the sum of the local rates in effect between the same points

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via the same routes at the same time, and reparation in the sum of \$41.50 is asked.

The Chicago, Rock Island & Pacific alleges that the rate charged was the lawfully published joint through rate in effect at the time and denies that complainant is entitled to reparation. The Grand Trunk Western makes general denial of the allegations in complainant's petition. The Lake Shore & Michigan Southern avers, as to the shipment of November 26, 1906, that reduced joint through rate from Kalamazoo, Mich., to St. Paul, Minn., based on the sum of the locals, did not take effect until January 10, 1907, admits that the rate of 49.5 cents per 100 pounds (the joint through rate in effect via its line and that of the Chicago, Rock Island & Pacific, at the time the shipment moved) was unreasonable and that complainant is entitled to reparation.

The Grand Rapids & Indiana Railway Company states that the shipment of November 22, 1906, was billed at rate of 33.5 cents per 100 pounds in accordance with its tariff, I. C. C. No. 677, effective October 27, 1906, and that any higher charge is an overcharge above the lawful tariff rate. We find that this statement as to the tariff is correct and that the Grand Trunk Western Railway and the Chicago, Rock Island & Pacific Railway were parties to the tariff. Therefore, as to this shipment, a straight overcharge above the lawful tariff rate was made.

On November 26 there was no through commodity rate on vehicles from and to the points named via the Lake Short & Michigan Southern and the Chicago, Rock Island & Pacific. The Official Classification in effect on that date rated vehicles, cutters, carloads, subject to Rule 27, third class. Lake Shore & Michigan Southern tariff, I. C. C. No. A-1466, provided third class rate from Kalamazoo to St. Paul via this route 49.5 cents per 100 pounds. Shipment moved in a 50-foot car, subject to a minimum under Rule 27 of 18,000 pounds, and charges on that basis were collected; whereas the locals were, east of Chicago, 13.5 cents per 100 pounds on minimum of 21,000 pounds, and west of Chicago 20 cents per 100 pounds on minimum of 20,000 pounds.

Supplement No. 5 to Lake Shore & Michigan Southern tariff, I. C. C. No. A-1902, effective January 10, 1907, names through rate on vehicles, all kinds, except automobiles and children's vehicles, from Kalamazoo, Mich., to St. Paul, Minn., 33.5 cents per 100 pounds, minimum weight east of Chicago 21,000 pounds, west of Chicago 20,000 pounds, via Chicago and the Chicago, Rock Island & Pacific Railway.

No testimony was submitted tending to show any special circumstances and conditions surrounding through shipments that would justify a joint through rate higher than the sum of the local rates.

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At the hearing the position of counsel for the Chicago, Rock Island & Pacific Railway Company appeared to be that a rate higher than the sum of the locals in effect on the date this shipment moved was unjust and unreasonable. He referred to the fact that Central Freight Association tariff, I. C. C. No. 12, just prior to the date of this shipment, contained a clause which practically provided for the application of the sum of the locals when that was less than the through rate, but contended that it would be a hardship on it and its codefendant to maintain a joint through rate of 33.5 cents from Kalamazoo to the Twin Cities for any specific period, thus depriving them of the advantage of flexibility of rates held by their competitors. The merit of this contention is therefore the only question open in this case.

The orders of the Commission require the maintenance for a specific period, limited by the terms of the law, of rates which "shall not exceed" the rates which the Commission has found to be reasonable. It follows that the restriction of the Commission's order upon flexibility in rates established by it is inhibitive only of an advance within the prescribed period. If the carriers participating in a joint through rate desire to reduce or increase the separately established local rates via the same route, the order of the Commission requiring the maintenance of a joint through rate is no bar to their doing so. If the competitors of the defendants in this case should reduce the joint through rate applicable on the same traffic there will be nothing in the Commission's order to prevent the defendants from making like reduction. It is only, as previously indicated, the increase of the rate against which the order of the Commission is directed, and should the competitors of the defendants advance their joint through rate it is natural to assume that the lower rate which would then be in effect via defendants' lines would bring business to them.

It should be remembered that the Commission has not ruled that a joint through rate exceeding the sum of the locals is conclusively presumed to be unreasonable. It has simply placed upon the defendants the burden of showing such a joint through rate to be reasonable. There are instances in which circumstances and conditions might justify the higher through rate, and it is for the carrier to demonstrate their potency in the establishment of a through rate that exceeds the sum of the locals. The practical effect of an order that the through rate shall not exceed the sum of the locals would place in the hands of defendants the power to nullify such order. They have the right to advance the separate locals, and should they do so they would then, under such an order, have the right to increase the joint through rate, and the order would be of no effect.

On the record we are of the opinion that the joint through rate on vehicles (cutters) from Kalamazoo, Mich., to St. Paul, Minn., via  
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the lines of the defendants, the Lake Shore & Michigan Southern, and the Chicago, Rock Island & Pacific Railway companies, of 49.5 cents per 100 pounds, in effect on the date shipment of November 26 moved, was and is and for the future would be unjust and unreasonable, and that it should not have exceeded 33.5 cents per 100 pounds, the sum of the local rates, in effect between the same points via the same route at the same time, and that the complainant is entitled to reparation in the sum of the difference between the aggregate charges collected on said shipment and the charges which would have been collected under a joint through rate of 33.5 cents per 100 pounds on the minima specified in Lake Shore & Michigan Southern tariff, I. C. C. No. A-1902, or \$20.75. The defendants, the Grand Rapids & Indiana, the Grand Trunk Western, and the Chicago, Rock Island & Pacific Railway companies will be directed to refund overcharge of \$20.75 over and above the lawful tariff rate on shipment of November 22, 1906.

An order in accordance with these views will be entered.

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No. 1475.

A. A. BENNETT

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY  
COMPANY.

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Submitted February 4, 1909. Decided February 8, 1909.

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Defendant ordered to cease and desist from assessing charges on a minimum weight of 5,000 pounds on a package of plate glass loaded into a box car, and to pay complainant reparation because of application of such unreasonable regulation.

A. A. Bennett for complainant in person.

T. E. Sands for defendant.

#### REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant is engaged in the retail drug business at Douglas, N. Dak., and on July 18, 1907, shipped via defendant's line from St. Paul, Minn., to Douglas, N. Dak., 1 package of plate glass, 8 feet square, the weight of which was 900 pounds, and upon which, under its tariffs, I. C. C. Nos. 1851 and 2386, the defendant exacted the first class rate of \$1.11 per 100 pounds on a minimum weight of 5,000 pounds, in accordance with item 17, page 54, of Western Classification No. 42, effective April 1, 1907, as follows:

In packages exceeding 7.5 feet high or 15 feet long, minimum charge 5,000 pounds.

Complainant alleges that charge collected should not have exceeded the first class rate on the actual weight, and claims reparation in the amount of \$45.51, the difference between the charges collected, \$55.50, and the amount which he alleges would have been reasonable. Complainant admitted that a minimum weight of 5,000 pounds on a shipment of plate glass so large that it must be loaded on a flat car was not unjust and unreasonable, but contended it was unreasonable when glass was loaded in a box car in which other freight could be and was loaded.

Defendant, a common carrier subject to the act to regulate commerce, denies that the rate and provisions of the classification are unjust and unreasonable.

The glass was covered with excelsior and packed in a hard maple box, which was nailed to the end, side, and bottom of the box car

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into which it was loaded together with other goods. The cost of the glass was \$46, f. o. b. St. Paul, to which point it had doubtless been shipped from Pittsburg or from some Atlantic or Gulf port. The freight charges exacted from this complainant for transporting it from St. Paul to Doulgas, a distance of 587 miles, exceeded by \$9.50 the cost of the glass at St. Paul.

Counsel for defendant read into the record an extract from a letter from F. O. Becker, chairman of the Western Classification Committee, to Second Vice-President and Traffic Manager W. L. Martin of the defendant, as follows:

For many years Western Classification provided a rating of three times first class, less than carloads, on packages of plate glass exceeding 7.5 feet in height or 19 feet united measurement, length and width, subject to a minimum charge of 5,000 pounds at first class. \* \* \* In January, 1906, nearly three years ago, the largest dealers in plate glass in the United States, the Pittsburg Plate Glass Company, asked that the classification be modified to provide that plate glass boxed in packages exceeding 7.5 feet in height or more than 19 feet, united measurement, be made first class with a minimum charge of 5,000 pounds, and it was so arranged.

Defendant contended that glass more than 7.5 feet in height required special equipment, was more difficult to handle, more liable to damage, the hazard was greater, and therefore the minimum weight was not unreasonable.

Western Classification No. 42 shows various ratings for glass, subject to Rule 17, which, in part, reads as follows:

17-B. Articles too large to be loaded through side doors on 36-foot box or stock cars (unless otherwise specified in Classification) shall be charged at actual weight and class rates for each article, provided that in no case shall the charge for the entire shipment be less than 5,000 pounds, at first class rate.

And to the note:

When packages of plate glass exceeding 7.5 feet high or more than 15 feet long are included with shipments of plate glass of smaller sizes, actual weight and class rates will apply on each package, with a minimum weight of 5,000 pounds at first class on the entire shipment.

It will thus be seen that shipments of glass in packages not exceeding 7.5 feet in height, and shipments exceeding 7.5 feet when included with plate glass of smaller sizes, will be taken at actual weight, the latter being subject to a minimum of 5,000 pounds for the entire shipment.

Complainant put in evidence letter dated October 23, 1907, from Second Vice-President and Traffic Manager Martin of the defendant, in which it is stated:

I think probably the 5,000-pound minimum rate was intended for shipments which would require a flat car, and in placing the height at 7½ feet the limit of height of some car doors was reached.

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Higher and wider cars are continually being built, and these dimension limits may be wrong, but our rule is the same as all the other roads, and we are not in a position to make refund legally.

Fortunately shipments of large sizes of plate glass are few to any one individual, and modification of the classification to the effect that the 5,000-pound minimum would apply only when necessary to load on flat cars would take care of the matter.

It was suggested by counsel for defendant that it was only one of a great many lines using Western Classification, that the matter had been thoroughly investigated by manufacturers and the various railroads, and the classification and its provisions had been agreed to, and no question as to the reasonableness of the minimum weight had been raised. Neither one nor all of these suggestions affect the right of the complainant to now challenge the reasonableness of the rule, nor debar or excuse the Commission from passing upon the question. Proceedings before the Commission are given wide publicity, and any interested carriers are given opportunity to defend the rate or provision in a classification, or a joint tariff where complaint has been made against a particular carrier, a party thereto, either upon petition for intervention or upon request of original defendant that such carriers be brought in as defendants.

The apparently controlling factor in determining the reasonableness of the regulation that a package of plate glass exceeding 7.5 feet in height shall be subject to a minimum weight of 5,000 pounds, is whether or not it can reasonably be loaded into a box car. This glass was loaded into a box car and the fact that it was a furniture car does not, in our view, materially affect the situation. It does not appear that ordinarily there would be difficulty about loading it into a box car. The change in the size of the carrier's equipment should naturally be followed by a change in rules which were made because of the smaller equipment in use at the time such rules were established. We are not called upon in this case to determine as to the reasonableness of a minimum weight of 5,000 pounds on a single package of plate glass necessarily loaded on a flat or gondola car, but we are of the opinion that a package of plate glass capable of being loaded into a box car should not have assessed against it an estimated weight, but should be transported at actual weight, subject of course, to the carrier's rule for minimum weight for packages weighing less than 100 pounds. We consider that a minimum weight of 5,000 pounds on a package of plate glass loaded into a box car is unjust and unreasonable and that complainant is entitled to the reparation claimed.

We can not, in this proceeding, issue an order for change in the Western Classification rule, except as it applies to this defendant. An order will be entered awarding this complainant reparation in the sum of \$45.51 with interest at 6 per cent per annum from July 23, 15 I. C. C. Rep.

1907, and requiring this defendant to cease and desist from assessing charges on weight in excess of actual weight of packages of plate glass that weigh more than 100 pounds and that can be loaded into an ordinary box car. This can be effected by a change in the classification which this defendant has adopted as governing its tariffs, or by an exception thereto applicable to the tariffs of this defendant.

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No. 1529.

MOUNTAIN ICE COMPANY ET AL.

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY.

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No. 1549.

SAME

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY ET AL.

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No. 1631.

MOUNTAIN ICE COMPANY AND TROUT LAKE ICE COM-  
PANY

v.

ERIE RAILROAD COMPANY.

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No. 1632.

SAME

v.

ERIE RAILROAD COMPANY ET AL.

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*Submitted January 23, 1909. Decided February 2, 1909.*

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1. Defendants' rates on natural ice from points of harvest in New Jersey and Pennsylvania to various consuming interstate destinations found unreasonable, and just and reasonable maximum rates prescribed for the future, when the ice is carried in ordinary box cars.
2. The service rendered by defendants in the movement of this traffic may properly be styled a "special" service; but it is not in any proper sense an "expedited" service, nor is it an expensive service.



3. When it is remembered that the value of this ice when taken up for transportation is almost nothing, and that the cars readily load to their physical capacity, on the average more than 27 tons, it will be seen that to few if any kinds of business should lower rates be applied by defendants; and this is especially true in view of the fact that the business of complainants has been built up under much lower rates, voluntarily established and long maintained by defendants, and that the investment so induced must be largely destroyed if the present rates are maintained. All that, however, would be no reason for requiring defendants to perform this service for a sum which would not fairly compensate them. Cost of service, rate per ton per mile, and other factors in making present rates, considered and discussed; but when taken into account they still leave the present rates excessive.
4. Reparation will be granted upon the basis of the rates here established; but order for same deferred, awaiting adjustment of the matter between parties.

*R. S. Hudspeth* and *H. C. Reynolds* for complainants.

*J. L. Seager* and *W. S. Jenney* for Delaware, Lackawanna & Western Railroad Company.

*H. A. Taylor* for Erie Railroad Company; New York, Susquehanna & Western Railroad Company, and Wilkesbarre & Eastern Railroad Company.

*Henry Wolf Bikle* and *G. S. Patterson* for Pennsylvania Railroad Company.

*J. F. Keany* and *D. B. Griffin* for Long Island Railroad Company.

*J. E. Reynolds* for Central Railroad Company of New Jersey.

#### REPORT OF THE COMMISSION.

##### *PROUTY, Commissioner:*

The above four cases all involve rates on natural ice from points where it is harvested, in New Jersey and Pennsylvania, to various consuming destinations. The general question is upon the reasonableness of the rates charged, and the cases were heard upon a single record.

No. 1529 attacks rates from various points upon the Delaware, Lackawanna & Western Railroad to various points upon that same line.

No. 1549 involves rates from the same points of origin upon the Delaware, Lackawanna & Western to points which are not upon that line of railroad, but are reached by its connections.

No. 1631 refers to rates from points of origin upon the Erie Railroad to local points upon its own line, while No. 1632 embraces rates from the same points of origin to points off the line of the Erie. The Wilkesbarre & Eastern Railroad and the New York, Susquehanna & Western Railroad are treated in this discussion as a part of the Erie system, although they are operated under a distinct management and as a separate proposition.

While the points of origin are somewhat numerous they may, for the purposes of this discussion, be thrown into two groups, designated as "Jersey" points and "mountain" points. The term "Jersey" points covers certain lakes in New Jersey from which ice is moved to Jersey City and similar points by the Erie and to Hoboken and other points by the Lackawanna. The movement from these points is for the most part confined to the state of New Jersey, and therefore not subject to our jurisdiction. There is, however, one shipping point, Greenwood Lake, in the state of New York, from which the Erie Railroad handles considerable quantities of ice to Jersey City. The rates from this station are the same as from Jersey points, and hence these rates to that extent are before us for examination. The average distance from these Jersey points to Hoboken and Jersey City is about 40 miles.

Mountain points are situated in the state of Pennsylvania among the Pocono Mountains. The ice houses of the complainants in these mountains are located upon both the Lackawanna and the Erie, the principal movement over the Lackawanna being to Hoboken and similar points upon its own line, and to Philadelphia over the lines of its connections, and upon the Erie to Jersey City and corresponding points upon its own line, and to Philadelphia over the lines of its connections.

There is also a considerable movement of ice from both Jersey and mountain points to Brooklyn and to points upon the Long Island Railroad, and the rates under which this moves are attacked, as are also rates to Wilmington, Atlantic City, Trenton, and many other points.

We have therefore for consideration rates from Jersey points to Hoboken and Jersey City; from mountain points to Hoboken and Jersey City; from mountain points to Philadelphia; from both mountain and Jersey points to points upon the Long Island Railroad. The other rates put in issue depend upon the above base rates, upon which the greater part of the traffic move, and need not be separately considered.

The present rates are as follows: From Greenwood Lake and other Jersey points, 60 cents per net ton to both Hoboken and Jersey City; from mountain points, 85 cents per ton to Hoboken and Jersey City; from mountain points to Philadelphia, \$1.40 per ton. There is no movement from Jersey points to Philadelphia. Rates to points on the Long Island Railroad will be stated and discussed by themselves.

As showing the unreasonableness of the present rates, the complainants put much stress upon the fact that the defendants formerly established, and for a considerable time maintained, rates which were materially lower.

There seems to have been some little movement of ice from Fox Hill and other representative Jersey points to Jersey City and Philadelphia as early as 1888, but no considerable business was done until about 1891. In that year the Erie Railroad, which was operating the Greenwood Lake Railroad, extending from Bergen Junction to Greenwood Lake, a distance of about 40 miles, established a rate from Greenwood Lake to Jersey City of 40 cents per ton. About the same time certain parties entered into an arrangement with the Lackawanna road looking to a large development of this business both at Jersey points and in the Pocono Mountains, and a contract was made by which rates were established for a period of not less than five years. These rates were, from Jersey points, 31 cents, and from mountain points, 41 cents to Hoboken; from mountain points to Philadelphia, \$1.20. Upon shipments to Philadelphia a shrinkage allowance of 10 per cent was made during the warm season, when most of the movement occurred, which reduced the rate to \$1.08 net.

These rates continued in effect until 1899, when the management of the Lackawanna road announced its purpose of making an advance to 50 cents from Jersey points and 65 cents from mountain points to Hoboken. The Erie seems to have contemplated the same advance, although the testimony upon that point is not equally clear.

This announcement brought out a storm of protest from the ice men, and the road finally consented to establish for that season a rate of 40 cents from Jersey points and 55 cents from mountain points. It would appear that the original Philadelphia rate was continued, although there seems to be some doubt as to whether the shrinkage allowance was made.

The next year the rate seems to have been increased to 65 cents from mountain points and to 50 cents from Jersey points, and in 1903 there was a further advance from mountain points, making the rates to Hoboken 75 and 50 cents, while the Philadelphia rate in the meantime seems to have been advanced to \$1.25, the shrinkage allowance by this time having disappeared.

In 1906 there was a further advance from all of these points of 10 cents per ton where the rate was less than \$1, and of 15 cents where it exceeded \$1. This produced a rate of 60 cents from Jersey points and 85 cents from mountain points to Jersey City and Hoboken, and of \$1.40 from mountain points to Philadelphia. Here, then, was an increase in these rates within a period of seven years of almost 100 per cent from Jersey points and of more than 100 per cent from mountain points by the Lackawanna, the advance by the Erie being somewhat less.

Both of these defendants justify this advance upon the ground that the original rates were abnormally low, and the Lackawanna road in particular points to the fact, as the evidence tending to show

this, that the contract establishing these rates was with a company in which officials of that road were largely interested. There seems to be no claim, and there is certainly no evidence to indicate anything in the nature of a corrupt bargain in the establishment of these rates, nor can it be fairly inferred that there was the slightest idea upon the part of the officials of that company that this action was not for the interest of the road. Formerly large quantities of lumber had been transported from the Pocono Mountains, but this business, with the cutting off of the timber, had disappeared, and the officials of that railroad were anxious to find something to take its place. Business in those days was scant, and almost anything was eagerly sought which offered even a small return. Under these circumstances this ice business was undertaken as something which would afford traffic out of which a small profit might be made by the railroad, which was better than no profit at all. It will be seen presently that these rates of 31 cents and 41 cents were about the same as the cost of bringing the ice from the houses upon the Hudson River, with which these operators must come into direct competition.

While there is no reason to believe that there was bad faith in the matter, it does seem probable that these rates were fully as low as they would have been but for the dual capacity in which these persons stood, and certainly there can be little question, for whatever reason, that they were unusually and abnormally low. The rate of 40 cents established by the Erie from Greenwood Lake is not open to the sort of attack made upon the 31-cent rate of the Lackawanna, and on the whole we think that this rate of the Erie ought to be considered as a normal one, which under the circumstances might well have been established and maintained as a good business proposition.

The second claim of the complainants is that they invested their money upon the strength of the original rates; that their business can not be profitably conducted upon the basis of the present rates, and that their investment must therefore be a loss, provided these rates are maintained.

The greater part of the natural ice which supplies New York City and vicinity is gathered upon the Hudson River. Ordinarily a crop of ice can be made from that source, and very extensive ice houses have been erected upon the banks of the river, into which the ice is gathered in the winter and from which it is brought by water to the various points of consumption. Hoboken and Jersey City can be readily reached from these ice houses; to supply from them interior points to the west of the Hudson River would, of course, involve a transportation by rail.

The methods of storing ice upon the Hudson River are the same as those employed by the complainants in New Jersey and Pennsylvania, and the cost of the ice in the house is practically the same in

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the two places. The expense of taking this ice from the house and putting it into the car is about the same as that of transferring it from the house to the barge. The water freight from the ice house to the dock is about 30 cents per ton, and it seems to cost about 10 cents more per ton to handle ice from the barge over the dock into the ice wagon than it does to handle it from the car. In order, therefore, to compete upon favorable terms the complainants must have from their plants a rate of about 40 cents per ton. This applies, as already suggested, to points which can be reached from the dock. A considerable part of the shipments of the complainants are to points at which this water ice could not be sold unless transported by rail.

It would seem, therefore, that unless there is some other advantage incident to the handling of ice from these points into Hoboken and Jersey City, the complainants could not successfully compete against the Hudson River under a rate of more than 40 or 50 cents per ton. So far as the Jersey points are concerned there seems to be no such advantage, but the mountain points do have one point of superiority which is of considerable weight. While ordinarily a crop of ice can be harvested upon the Hudson, seasons occur frequently when the weather is not sufficiently cold to permit this. The crop at mountain points never fails. When ice is short upon the Hudson the price at all New York points is very much increased, so that in such seasons the profits to operators in the Pocono Mountains are very large. This is an element of advantage in favor of the operator in that locality, which, taking the years together, will fairly permit the payment of a somewhat higher rate from those regions.

The competitive relation between the Hudson River and these interior points is substantially the same to-day that it was in 1892, when these rates were established. The price of ice has somewhat increased, but the expense of gathering it has also increased, and that increase has been common both to the operator upon the Hudson River and the operator at the interior points. The cost of transportation down the Hudson is substantially the same now as it was then. An increase in the cost of carriage to the interior operator puts him, therefore, to that much additional disadvantage in comparison with his situation in 1892. When it is remembered that a profit of a few cents per ton is all that complainants can fairly expect to make in ordinary years, it will be readily appreciated that if the rate was fairly adjusted at first these advances must more than eliminate all profit and must finally extinguish the business so far as it is controlled by Hudson River competition. The complainants may still do business at points which are not accessible to water ice, but they can not compete upon an even basis where ice can be delivered over the dock.

Another circumstance which makes against the complainants is the manufacture of artificial ice. When the ice business was first developed at these interior points the ice machine was almost unknown in the markets of the North. To-day this is entirely different. It was said that there were 34 plants engaged in the production of artificial ice in New York and Brooklyn alone. More than one-half the total ice consumption of Philadelphia is artificial. The quality of artificial ice is such that it commands the same price in the market with natural ice, and it can be manufactured to sell at a very handsome profit for \$2 per ton, which is less than natural ice is sold for in either New York or Philadelphia. To the profitable operation of the ice plant it is necessary that it should be run to its full capacity all the time. It has been found impossible, in northern climates at least, to profitably store artificial ice, and the result of this is that the ice machine supplies in these markets that demand which is constant throughout the entire season, but can not fully supply the large additional demand which comes with warm weather.

The markets in which the complainants mainly dispose of their product may be divided into three:

1. Territory which is tributary to the Hudson River, including Jersey City, Hoboken, and Brooklyn.
2. Philadelphia and adjacent territory.
3. Interior territory between the Hudson River and Philadelphia, embracing points like Atlantic City, Wilmington, Trenton, etc., together with points upon the Long Island Railroad.

In the year 1907 the complainants handled about 400,000 tons of ice, of which 100,000 went to Philadelphia, perhaps 100,000 to interior points, and the balance to Jersey City, Hoboken, and Brooklyn. The competition which is met at all points tributary to the Hudson has already been referred to.

Philadelphia originally derived its supply largely from Maine. When ice producers in the Pocono Mountains entered the Philadelphia market the principal competition was with ice brought in sailing vessels. This source of supply has mainly disappeared. To-day but little natural ice is obtained for that market from any other source than the Pocono Mountains. The serious competition which the complainants meet to-day in Philadelphia is manufactured ice, and against this they can apparently sell only during the heated term.

The most favorable market for the complainants seems to be the interior territory, where but little competition is met from natural sources of supply. The ice machine is found in all towns of considerable size, and is more and more invading the field formerly held by the natural product.

It costs about 20 cents per ton to cut the ice and store it in the house, and another 20 cents per ton to transfer it from the house to the car. In the handling of the ice between the pond and the car, as loaded, a shrinkage of about 20 per cent in weight occurs. The above cost does not include interest on the investment or depreciation in the plant. During the year 1907 the Mountain Ice Company received at its various houses f. o. b. the cars an average price of 64 cents per ton for its product. When it is remembered that the entire amount harvested is seldom sold and that a large loss occurs in carrying over ice, and when it is further considered that the depreciation of these ice houses is rapid, it will be seen that the margin of profit in ordinary years is extremely small.

The Mountain Ice Company is a corporation organized for the purpose of operating certain ice plants in New Jersey and the Pocono Mountains, which include substantially all the ice properties in those regions. It represents a large money investment in the properties so operated. Most of these plants were constructed previous to 1901, and all of them before the last advance in 1906. A careful consideration of the record goes far toward confirming the claim of the complainants that under present conditions and upon the present rates their business can not be profitably continued. Unless some reduction in these rates is secured, that business must be materially curtailed and the value of their properties seriously impaired.

The complainants also insist that while the rates have continually advanced for the last eight years, the service has grown poorer and is to-day of less value to them than it was under the lower rates. This is mainly for the reason that the character of the equipment employed is not as good now as formerly.

Ice may be, and frequently is, transported in ordinary box cars. From the nature of the commodity almost any kind of box car can be employed for this purpose, and the testimony of the complainants indicates that, especially during the years 1906 and 1907, the cars furnished were extremely poor, being for the most part small in size and so defective as not to be capable of use for the transportation of grain and many other kinds of freight.

To a considerable extent special cars have been used by the defendants for the handling of this commodity. Some years ago the Delaware, Lackawanna & Western constructed about 600 ice cars, which are provided with a double wall and so insulated as to prevent the access of warm air to the ice. Refrigerator cars are also used for this purpose.

In warm weather ice when transported in an ordinary box car shrinks in weight during a period of from twenty-four to thirty-six hours about 20 per cent. When transported in ice or refriger-

erator cars the shrinkage is only about 10 per cent. The ice is weighed at the point of origin and the freight is computed upon that weight. In order to determine the money value of this shrinkage the percentage of loss must be reckoned upon the price of the ice at the ice house plus the freight. The value of ice in the car upon the Pocono Mountains is about 75 cents per ton, and the freight to Hoboken 85 cents, a total of \$1.60. Twenty per cent of this would be 32 cents per ton; 10 per cent, 16 cents per ton. It therefore makes a difference to the shipper of 16 cents per ton whether his ice is transported between these points in an ice car or in the ordinary box car, a sum which would represent a handsome profit in the handling of ice by the complainants.

The complainants allege that of late years the proportion of special ice cars to the whole has been much less than formerly, and that it is continually growing less, all of which is equivalent to an advance in rates. They ask that the defendants in this proceeding be ordered to provide special equipment for the handling of this freight.

It appears that the Erie Railroad has no special ice equipment. So far as refrigerator cars are provided by that company they seem to be taken from its regular refrigerator service. As already said, the Delaware, Lackawanna & Western formerly constructed, and now has in service a considerable number of ice cars which were especially built for this business, but that company announced upon the hearing that it would not add to this equipment, so that in process of time the cars now in use will cease to be available.

Its reasons were that an ice car costs considerably more to construct than an ordinary box car; that the cost of maintaining it was about 25 per cent more than with the ordinary box car, and that it could not be used except in this special service. It is undoubtedly true that it costs somewhat more to build and maintain these ice cars than the ordinary box car. It is also true that they can not be put to the same variety of use, but they are employed for the handling of produce and other commodities which require protection from the cold in winter and from the heat in summer, and in this way can be kept in reasonably constant service. The expense of rendering this service in special equipment is greater to the carrier, but the value of that service is more than proportionately greater to the shipper.

It will be seen later that as ice moves from Jersey points to Hoboken and Jersey City it is usually loaded during the day and delivered for unloading the next morning. As it moves from mountain points, both to Philadelphia and the Hudson River, the car is loaded one day, taken from the ice house the following morning, and delivered for unloading the next morning. When transported to Brooklyn or



to points on the Long Island Railroad the time occupied is even longer. It would appear, therefore, that this ice can be handled in box cars to fairly good advantage from Jersey points to the Hudson River and corresponding destinations, but that when the movement is from the mountains, especially when it is to Philadelphia or to Long Island, it ought to be carried in special equipment.

The defendants insist that under the old rates this business was handled at an actual loss and that the present rates are none too high. They urge that the service is an expedited one, requiring a special equipment, involving an empty return car movement, and a costly terminal service at both ends of the line.

The matter of special equipment has already been referred to. This ice is mainly transported during the months of June to October, inclusive, and from its very nature must, when loaded upon the cars, be moved with reasonable promptness to its destination. The character of the service was very fully gone into upon the hearing and will be best understood by a brief reference to the manner in which this traffic is actually handled.

These ice houses in the mountains, both upon the Erie and the Lackawanna lines, are situated sometimes upon the main line, but usually at a considerable distance from it. The switch lines connecting them with the main line are often a mile and more in length, and have as a rule been provided and are maintained and operated by the defendants.

Upon the Erie Railroad mountain ice is collected and brought into Stroudsburg, where it is made up into trains for Jersey City. The grades between Stroudsburg and the ice houses are severe, and some of the switch tracks are so situated that they can not be operated by a single engine. In the collection of this ice, therefore, it is necessary to send out two locomotives with each train, and it appears that this outfit can handle about 32 empty cars out of Stroudsburg to the ice houses and about 35 loaded cars from the ice houses into Stroudsburg. At Stroudsburg the ice is made up into a train of approximately 30 cars and is hauled as a solid train from there to Jersey City, a distance of 96 miles. These trains leave Stroudsburg at about 2 o'clock in the afternoon and the ice is delivered in Jersey City for unloading the following morning. Two engines are required to handle this train from Stroudsburg to Paterson, from which point it is taken in by a single locomotive. The run from Stroudsburg to West End occupies from 2 o'clock in the afternoon until about 11 o'clock in the evening.

Upon the Lackawanna road Gouldsboro is the first station at which ice is taken up, being distant 127 miles from Hoboken. Several of these ice plants are tributary to Gouldsboro. A switch engine and crew

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leave that yard early in the morning with the empties, which they distribute to the various plants, bringing back the cars which have been loaded the day before. At Gouldsboro these cars are made up into trains for Hoboken. Other ice houses are located to the east of Gouldsboro, and from these the cars are taken into the train upon its way to Hoboken. These ice cars leave Gouldsboro between 10 and 12 o'clock in the forenoon and reach Hoboken late that evening or early the next morning, in time to be placed for unloading the day following the loading.

The oral testimony indicated that ice was moved over the Lackawanna from Gouldsboro to Hoboken in solid trains of about 33 cars, but the wheelage reports of that company were introduced and an examination of them leads to the inference that ice is moved from Gouldsboro in whatever trains are found most convenient to the Lackawanna. These trains do not often consist entirely of ice, but are made up of various kinds of freight, the number of carloads being from 35 to 40 in the train. The train is handled by two engines for most of the way to Hoboken.

Ice moves from mountain points upon the Lackawanna to Philadelphia by way of Washington, Phillipsburg, and the Central of New Jersey, but mainly via Manunka Chunk and the Pennsylvania.

The average distance from points of origin to Manunka Chunk is about 40 miles. One engine handles a train of 40 cars to this point, leaving Gouldsboro about 11 o'clock in the forenoon and reaching Manunka Chunk not later than 4 o'clock in the afternoon. The distance from Manunka Chunk to Philadelphia by the Pennsylvania is something over 100 miles, making a total distance of about 140 miles. A single engine will handle a train of 35 cars from Manunka Chunk to Philadelphia, and with slight assistance at one point 45 cars can be taken. The train is handled as a solid ice train from Manunka Chunk to Trenton, where cars intended for other points than Philadelphia are set out, the balance being carried on to Philadelphia. From 4 o'clock in the afternoon until the next forenoon is occupied in transporting this train from Manunka Chunk to points of delivery in that city. While no complaint seems to have been made as to the service in Jersey City and Hoboken, there was complaint that cars were not placed for unloading in Philadelphia as early as they properly should be.

These cars are unloaded during the day and are returned empty to Manunka Chunk the second morning.

No account is given of the movement from points on the Lackawanna to Philadelphia via Washington and Phillipsburg. The movement from points on the Erie to Philadelphia is comparatively light. Such movement may be effected either via Sparta Junction,

the Lehigh & Hudson, and the Reading system, or to West End and thence back to Philadelphia, a distance of nearly 219 miles. While it is stated that both these routes are used the case gives no account of the extent or circumstances of that movement.

The service rendered by these defendants in the movement of this traffic as above set forth may properly be styled a "special" service. It is not in any proper sense of that word an "expedited" service, nor is it an expensive service. In no way can traffic be moved more cheaply than in solid train loads like those moving from points upon the Lackawanna to Philadelphia via Manunka Chunk.

When, in addition, it is remembered that the value of this commodity when taken up for transportation is almost nothing, and that the cars readily load to their physical capacity, on the average more than 27 tons, it will be seen that to few if any kinds of business should lower rates be applied by these defendants. And this is especially true in view of the fact that the business of these complainants has been built up under much lower rates, voluntarily established and long maintained by the defendants, and that the investment so induced must be largely destroyed if the present rates are maintained.

All that, however, would be no reason for requiring these defendants to perform this service for a sum which would not fairly compensate them. An attempt has been made by both the Erie and the Lackawanna to show that at the present rates the revenue but slightly exceeds the actual cost of the service and that if these rates were materially reduced that little profit would be turned into an absolute loss.

Ice from Greenwood Lake over the Greenwood Lake Railroad is moved by the Erie during the shipping season with a single engine and one train crew. This engine leaves Bergen Junction with the empty cars in the forenoon, reaches Greenwood Lake in the early afternoon, and returns with the loaded cars in the evening, arriving at Bergen Junction in time for the ice to be moved into Jersey City and placed for unloading the next morning. This train hauls on the average from 14 to 18 cars and handles no other business. It would seem to be an easy matter to determine the actual expense of moving this train for the season, and the Erie has attempted, at the request of the Commission, to furnish these figures.

The statement shows, in round numbers, that the cost of maintenance of way assignable to this train was \$3,000, the cost of maintenance of equipment \$7,000, transportation expenses \$5,000, a total of \$15,000. The actual revenue, at 60 cents per ton, was something over \$20,000. The cost, as above given, is only between Bergen Junction and Greenwood Lake, but the traffic was delivered at other points than Bergen Junction, most of it in Jersey City, involving an

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additional haul of 4 miles and an expensive terminal service. If, therefore, the above statement correctly represents the actual cost of operating this train, it is evident that, estimated by the results from its operation, the present rate is none too high.

It will be noted that of the total expense above given, maintenance of way is 20 per cent, maintenance of equipment 46 $\frac{2}{3}$  per cent, and transportation expense 33 $\frac{1}{3}$  per cent. Turning, now, to the operations of the Erie Railroad as shown by its annual report for the year ending June 30, 1908, we find that of the entire operating expenses of that company maintenance of way and structures makes up 18 per cent, maintenance of equipment 29 per cent, transportation expenses 48 per cent, certain other small items being omitted.

Traffic upon this branch railroad is extremely light, and this renders any deduction from the expenses of operating this train, in so far as those expenses are determined upon a mileage basis, misleading. The transportation expenses of this train are in the main the actual expenses as determined by the amount of coal actually consumed and the number of men actually employed, but a portion of these expenses is necessarily assigned upon the basis of train mileage.

Maintenance of equipment is partly actual and partly estimated. The basis of the estimate is manifestly wrong and produces altogether too high a figure. From \$4,500 to \$5,000, instead of over \$7,000, would be more nearly correct.

The expense of maintaining way and structures has been assigned to this train upon the basis of mileage, which of course charges the train with its proportionate share of the cost of maintenance; but this expense must have been incurred almost or quite in toto if this ice train had not run.

It seems evident that the fair cost of doing this business under normal conditions would not have much exceeded \$10,000, charging against this train its full proportion of cost of maintaining way and structures, and it further seems probable that the cost of operating this train as it was actually operated upon that particular branch did not add to the total expense of the maintenance and operation of that 40 miles of road by more than \$10,000. It will be seen therefore that even though these rates were to be reduced 10 cents a ton the business would still be desirable either to this branch as it is actually situated or to the Erie Railroad upon an average part of its system.

It should also be noted that this particular ice train for the four months covered by the statement only averaged about 15 cars, while trains upon the main line of the Erie and Lackawanna engaged in this ice business carry from 30 to 40 cars.

The method employed by the Lackawanna to determine the cost of handling this ice is entirely different. That company assumes that

ice is handled in solid trains of 30 cars from Gouldsboro to Secaucus, just west of Hoboken, where trains are broken up for switch delivery. It determines the actual cost of hauling this train from Gouldsboro to Secaucus and a corresponding number of empty cars from Secaucus back to Gouldsboro. Dividing the total by 30, it obtains the cost per car.

It then determines what is styled the "indirect line cost" per car and the "indirect terminal cost" per car. The line cost is obtained by distributing expenses between freight and passengers and then determining the cost of handling a ton of freight per mile. Assuming that these ice cars contain on the average 27 tons, the indirect line cost of handling a car per mile is obtained by multiplying the cost per ton per mile by 27. The cost per car mile thus obtained is multiplied by 159, for the reason that the empty-car movement is greater in case of this traffic than upon the average on the system of the Delaware, Lackawanna & Western.

The indirect terminal expense is obtained by distributing the total expense assignable to freight between line and terminal and dividing this amount by the total number of cars.

Upon this basis of computation that company shows that the total expense per car of moving 30 cars of ice from Gouldsboro to Secaucus and moving the empty cars back to Gouldsboro is \$2.29. In the computation as presented by the defendant there is added an item of 35 cents on account of the greater expense of maintaining the ice car than ordinary equipment.

The indirect line expense, computed as above, is \$9.63, and the indirect terminal expense \$7.28 per car. These items aggregate \$19.55, which deducted from \$22.95, the revenue at 85 cents per ton, leaves a profit of \$3.40.

While this computation of the defendant has been made at considerable expense and evidently with great care, and while it is instructive, it can not be accepted as establishing the proposition contended for, which is that the present rate only pays the actual cost of the service, and that if this defendant is required to reduce that rate it will in effect be required to handle this traffic at a loss.

The first significant fact in this computation is that the actual expense of moving this business from Gouldsboro to Secaucus and moving the empty cars back is about \$2.29 per car, while the revenue at 85 cents per ton is \$22.95 per car.

In arriving at the indirect line expense, as above stated, the average cost of moving a ton of freight upon the line of the Lackawanna is determined, and it is assumed that the cost in the case of this ice equals the average. But for this assumption there is no warrant, nor is there the slightest evidence bearing upon that point.

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Plainly, the cost might be greater or less according to the nature of the entire traffic handled over that system. Our general impression is that the average cost of handling a ton of this ice from Gouldsboro to Secaucus upon an average load of 27 tons to the car in solid trains would be much less than the average cost of handling all business, carload and less than carload, upon the line of the Lackawanna. But upon this point there is no information, and no opinion of value can be expressed.

The computation also assumes that this ice traffic ought to pay a proportionate share on the average of these so-called "indirect line expenses" with all other traffic. This can not be conceded. Some of the items which go into this indirect line expense are due in part to the movement of these ice trains and others are not. To assume that every ton of this ice should bear a proportionate share of all the expenses of this railroad of all kinds is to beg the whole question.

Nearly one-third of the total amount which is used for the purpose of determining the ton-mile cost in case of indirect line expense and of terminal cost is styled "fixed charges." Exactly what these fixed charges are does not appear. The statement shows that a small amount is for interest and taxes, the great bulk being for rent. On what theory can it be assumed that this traffic shall pay in proportion to the number of tons exactly the same contribution to these fixed charges that all other traffic pays? The fixed charges of a railroad sometimes represent the entire value of the property. Instances could easily be cited where a railroad ought not to earn in excess of its fixed charges. Can it be said that every ton of this ice shall pay as much toward this return to the holders of this property as does a ton of silk? The tariffs of this defendant are constructed, and ought to be constructed, upon an entirely different theory.

The same vice enters into the determination of the terminal expense per car, which is merely an average obtained by dividing the total terminal cost, including a proportion of these fixed charges, by the total number of cars handled.

It would be our impression from what appears as to the manner in which this business is handled that the terminal cost of originating and delivering this ice would be below the average, but here there is no testimony, and no accurate opinion can be vouchsafed.

The only positive thing about this statement is the actual cost of handling these carloads of ice from Gouldsboro to Secaucus and the empty cars back. The wide margin between this amount and the revenues received under the present rates, considered in connection with the nature of the other expenses attaching to this business, leaves little room for doubt that although these rates were materially

reduced the Lackawanna would still obtain a fair profit from the business.

The complainants compare the ton-mile revenue received by the defendants from this business with their average ton-mile revenue, and argue from this that the present rates are excessive.

The average haul from mountain points to Hoboken and Jersey City is not far from 110 miles, and the revenue at 85 cents per ton is approximately 7.7 mills. The average ton-mile revenue of the Lackawanna for the year ending June 30, 1908, was 7.21 mills, and of the Erie 6.28 mills. It will be seen, therefore, that this rate produces, in the case of both these defendants, a ton-mile revenue above the average.

Considering the very small value of this commodity when taken up for transportation, in connection with the manner in which it is handled, and the fact that the business can only move at all under low rates, we are impressed and have already expressed the opinion that these defendants ought to accept for this business rates which are among the very lowest made by them in any instance. Other conditions being equal, their rate per ton-mile from this traffic ought not to equal the average from all sources.

In comparing the rate per-ton mile, however, length of haul is a vital element. The average haul upon the Lackawanna for the above year was 182 miles; upon the Erie 150 miles. It would hardly be proper to compare this haul of 110 miles with the longer average haul, but these ton-mile comparisons do fairly indicate that the present rates could be substantially reduced. A rate yielding 6 mills per ton-mile for the transportation of this commodity 110 miles could not be regarded as an unprofitable or extravagantly low charge.

The opinion has already been expressed that the rates originally established by the Erie, which were 40 cents from Jersey points and 55 cents from mountain points to Jersey City, were what might be styled "normal rates" at the time they were put in. Since then the cost of materials and labor has materially increased. To offset this economies have been introduced into the operation of railways and the tonnage has been very much increased, so that the net result under the old rate may be as favorable to the carrier to-day as it was in 1892. For these reasons it might happen that as applied to the entire business of a railroad company these increases in operating expenses would not justify an advance in rates. But however this might be as a whole, we are inclined to think that in the case of this low-grade traffic where the margin of profit was small to begin with, where the business itself is not as desirable to-day as it was when originally developed, this enhanced cost of operation may properly be offset by an increase of the rate.

Taking everything into account, we are of the opinion that the present rates are excessive and that a rate of 50 cents per net ton from Greenwood Lake to Jersey City and 65 cents from mountain points to both Hoboken and Jersey City would be just and reasonable charges to be applied for the future when the ice is carried in ordinary box cars.

The principal movement from points on the Lackawanna to Philadelphia is via Manunka Chunk. The distance is about 140 miles and the present rate is \$1.40. The original rate was \$1.20, with a 10 per cent allowance for shrinkage, which produced a net rate of \$1.08. This business moves over two lines, and the terminal service at Philadelphia is an expensive one. Nevertheless, we are clearly of the opinion that the present rate is too high, and that a rate of \$1.20 per net ton ought not to be exceeded in the future when the movement is in ordinary box cars.

The movement from points upon the Lackawanna via Washington and Phillipsburg, and from points upon the Erie, either via Sparta Junction or via West End, would seem to be much more expensive and not generally resorted to. In our opinion the present rate via these lines ought not to be reduced by us. The defendants may find it for their own interest, owing to competitive or operating conditions, to establish the same rate via these other junctions, and it is possible that upon a more full development of the case the Commission itself might see fit to reduce these rates, but upon the present record it seems unjust to do so.

The Delaware, Lackawanna & Western maintains joint rates with the Long Island Railroad to stations on its line from both Jersey points and mountain points. It was stated that these rates are made by taking the local rate of the Lackawanna to Hoboken and adding 25 cents per ton for lighterage and the local rate of the Long Island Railroad.

Very little testimony was given as to the conditions surrounding this transportation beyond Hoboken, and no very satisfactory conclusion can be reached. We have held that the rate from Jersey points to Hoboken should be reduced 10 cents per ton, and that from mountain points to Hoboken 20 cents per ton. Under all the circumstances we think that the present joint rates as established by the Delaware, Lackawanna & Western under its tariff, I. C. C. No. 4147, effective February 9, 1907, should be reduced from Group I, or Jersey points, 20 cents per ton, and from Group II, or mountain points, 30 cents per ton, and that the rates so reduced would be just and reasonable rates to charge for the future when the ice is carried in ordinary box cars.



The Erie Railroad, under its tariff, I. C. C. No. 5591, in connection with the Long Island Railroad, maintains joint rates from Cooper, Ringwood, Sterling Forest, and Charlottesburg, these being Jersey points, which are apparently 10 cents per ton higher in all cases than those maintained as above by the Delaware, Lackawanna & Western. The Erie also maintains joint rates from Stockholm, N. J., which are 5 cents higher than from other Jersey points.

The reason why these rates by the Erie are higher than by the Lackawanna does not appear; nor is there any testimony as to rates from Stockholm, which seems to be a more distant Jersey point. We can make no order, properly, as to Stockholm, but we are of the opinion that the present rates from Cooper, Ringwood, Sterling Forest, and Charlottesburg, as stated in the above tariff, are unjust and unreasonable, and that rates 20 cents per ton lower would be just and reasonable rates to apply for the future, and that these should not be exceeded.

A great many other points are enumerated in the complaints and some little testimony was given with respect to some of them, but there is no information before the Commission upon which it ought to proceed to establish these rates. The carriers themselves will be able to check in rates at these points substantially in accordance with the views expressed in this opinion, and if they neglect to do so the complainants can call the matter to our attention by supplemental petition, upon which a further hearing may be had.

As already pointed out, when special ice cars are used the service is of distinctly more value to the shipper. We do not think that under the circumstances of this case we could with propriety, if we had the necessary authority, upon which no opinion is expressed, direct these defendants to furnish any particular number of special cars for the handling of this traffic. But it does seem proper to allow the imposition of a higher charge when such equipment is voluntarily furnished by the carrier. The carriers may, therefore, add to the rates above established 5 cents per ton from Jersey points to Jersey City and Hoboken, 10 cents per ton from mountain points to Jersey City and Hoboken, and 15 cents per ton to Philadelphia and Brooklyn and points on the Long Island Railroad when special ice cars are provided.

The complainants ask reparation, which will be granted upon the basis of the rates here established for a period of two years before the filing of the several complaints. If it can not be determined whether shipment was made in ordinary cars or special equipment, some method must be devised for reaching an equitable result. If the parties can agree upon the amount of reparation the Commission

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will approve the agreement, if it seems a proper one, otherwise the complainants should at once prepare schedules showing in detail the shipments with respect to which they will claim such reparation, and these schedules should be filed with the Commission and served upon the defendants. If the parties can not themselves agree upon the amounts, the matter will be taken up and further proceeded with by the Commission, the case being held open for that purpose.

15 I. C. C. Rep.

No. 1734.

A. A. COOPER &amp; SON

v.

CHICAGO, BURLINGTON, &amp; QUINCY RAILROAD COMPANY.

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*Submitted January 30, 1909. Decided February 8, 1909.*

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Defendant's rate for the transportation of corn in carloads of 19 cents per 100 pounds from Humboldt, Nebr., to St. Francis, Kans., and of 18 cents per 100 pounds from Pawnee, Nebr., to St. Francis and Atwood, Kans., found unreasonable; and the maximum of 13.6 cents per 100 pounds prescribed as a reasonable rate for the future. Reparation awarded.

*O. A. Cooper* for complainant.

*H. J. Nelson, A. L. West, and G. H. Crosby* for defendant.

## REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

February 11, 1908, the complainant firm made shipment of 1 carload of corn, containing 44,200 pounds, from Humboldt, Nebr., to St. Francis, Kans., over the line of the defendant, upon which a rate of 19 cents per 100 pounds was assessed and charges of \$83.98 paid.

On February 10, 1908, shipment was made from Pawnee, Nebr., to St. Francis, Kans., of 1 carload of corn, weighing 47,957 pounds, upon which a rate of 18 cents was assessed, upon a minimum of 50,000 pounds, aggregating \$90.

On March 3, 1908, the complainant shipped from Humboldt, Nebr., to Atwood, Kans., over the line of the defendant, 1 carload of corn, containing 44,300 pounds, upon which charges were assessed at the rate of 18 cents per 100 pounds, aggregating \$79.74.

The complainant alleges that these charges of 18 and 19 cents, so assessed, were excessive; that said rates ought not to have exceeded, in either case, 13.6 cents per 100 pounds, and reparation is prayed for upon this basis.

The distance from Humboldt to Atwood is 297 miles; from Humboldt to St. Francis 340 miles; from Pawnee to St. Francis 281 miles. St. Francis is at the westerly end of the Orleans branch line of the defendant. Atwood is upon the same branch, 43 miles east of

15 I. C. C. Rep.

St. Francis. The distance from St. Francis to Kansas City is 478 miles, and both Humboldt and Pawnee are upon the line of the defendant intermediate between St. Francis and Kansas City.

For a considerable period, including the time during which these shipments moved, the rate on corn from St. Francis and Atwood to Kansas City has been 13.6 cents per 100 pounds, and the rate from Kansas City to both these points in the reverse direction has been the same. The rate in both Kansas and Nebraska for distances approximating 280 miles is between 12 and 13 cents per 100 pounds. Corn is shipped to these points for feeding purposes, so that the defendants obtain the haul of the grain in, and of the fattened stock out.

In our opinion the rates charged by the defendant were unreasonable and excessive and ought not to have exceeded 13.6 cents per 100 pounds. We therefore find that the defendant, with respect to the shipment of these 3 carloads, has exacted from the complainant the sum of \$68.14 over and above what would have been reasonable and just, and that the complainant is entitled to an order for reparation in that amount, with interest at 6 per cent from April 1, 1908.

We are also of the opinion that a rate of 13.6 cents would be reasonable to apply to the shipment of corn from Humboldt and Pawnee, Nebr., to Atwood and St. Francis, Kans., over the line of the defendant for the future. An order will be issued accordingly.

15 I. C. C. Rep.

No. 1732.  
PENROD WALNUT & VENEER COMPANY  
*v.*  
CHICAGO, BURLINGTON & QUINCY RAILROAD COM-  
PANY ET AL.

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*Submitted January 30, 1909. Decided February 8, 1909.*

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Defendants' rates on walnut veneer from Kansas City to Chicago and Chicago points at the time of filing this complaint were 65 cents in any quantity, but shortly before the hearing they were reduced to 27 cents, C. L., and 45 cents, L. C. L. Upon complaint that the present rates are still excessive; *Held*, That considering the value of the article and the manner in which it is manufactured, the present rates ought not to be pronounced excessive. Reparation will be awarded upon the basis of the rates here established in further proceedings, if necessary.

*S. F. Prouty* for complainant.

*G. H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

*M. A. Low* for Chicago, Rock Island & Pacific Railway Company and St. Louis & San Francisco Railroad Company.

*A. A. Hurd* and *F. H. Manter* for Atchison, Topeka & Santa Fe Railway Company.

*C. M. Miller* for Chicago & Alton Railroad Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*Kimbrough Stone* for Chicago Great Western Railway Company and receivers.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

This petition attacks both the carload and less-than-carload rates on walnut veneer from Kansas City to Chicago and Chicago points. These rates at the time of the filing of the petition were 65 cents in any quantity, but on November 17, 1908, shortly before the hearing, they were reduced to 27 cents, carloads, and 45 cents, less than carloads. The petitioner contends that the present rates are still excessive.

Walnut veneer, as shipped by the complainant, is manufactured by steaming the log and shaving off the veneer about one-thirtieth of an inch in thickness. It is shipped in packages 8 feet long, about 3 feet wide, and 20 inches thick, weighing from 800 to 900 pounds each. It readily loads from 30,000 to 40,000 pounds to the car—not quite as heavily as lumber.

The value of veneer varies greatly with the quality. The higher grades of walnut veneer sell at the mill for \$5 and \$6 per 1,000 feet, the cheaper grades for very much less. Oak veneers are about 33½ per cent less in value than walnut.

The complainant sells its veneer in competition with mills located at various points, of which Cairo and Baltimore may be taken as fairly representative. The rate on veneer from Cairo to Chicago, a distance of 365 miles, is 12 cents per 100 pounds. The rate on lumber is 10 cents per 100 pounds. The rate on veneer from Baltimore to Chicago, 802 miles, is 27 cents in carloads and 47 cents in less than carloads. The rate on lumber between the same points is 22 cents. The lumber rate from Kansas City to Chicago, a distance of 458 miles, is 16 cents.

Before putting in the necessary machinery with which to cut this veneer at Kansas City the complainant inquired as to the rates, and the agent of the Burlington System quoted rates to Chicago, 27 cents in carloads, and 45 cents in less than carloads. When, however, shipments began to move, it was ascertained that under the tariffs then in force veneer took a rate of 65 cents, the regular second class rate, in any quantity, and that rate was applied up to November 18, 1908. The rates now in effect, 27 cents C. L., and 45 cents, L. C. L., are the regular third and fifth class rates. While high as compared with rates upon this commodity in other localities, we do not feel, considering the value of the article and the manner in which it is manufactured, that they ought to be pronounced excessive. This veneer is made from the log, and it does not, therefore, come into competition with lumber. It is our impression that veneers are also manufactured from lumber, but they may be of a different kind, and so not competitive. The value of the veneer is such that a few cents per 100 pounds does not control, although it influences, the point of manufacture.

The rates now in effect are commodity rates, although in amount they are the same as the regular third and fifth class rates. In our opinion this commodity should be classified as third class in less than carloads and fifth class in carloads, thus extending these rates to the movement of veneer wherever the Western Classification prevails. The rates from Baltimore to Chicago are the regular third and fifth

class rates. It is desirable to avoid the use of commodity rates which are in their nature discriminatory, wherever it is possible.

The complainant asks reparation, and this claim is vigorously resisted by the defendants.

It must not be understood that whenever this Commission reduces a rate, it necessarily follows that it will award reparation upon the basis of the rate established for two years preceding the filing of the petition. There is no conclusive presumption that a rate reasonable to-day was reasonable a year before or a day before, since reasonable rates vary from time to time, and some point of division must be found. Where, therefore, rates have been established and maintained by the carriers in good faith, especially where they have been long in effect and acquiesced in by shippers without protest, this Commission will not award reparation, even though the rate is reduced, unless it clearly appears that the rates paid in the past have been excessive.

In this case it does clearly appear that the rates imposed upon this complainant were unreasonable to the point of extortion. There can be no serious pretense that a rate of 65 cents, as applied to either carloads or less than carloads, was just. The complainant embarked in its business upon the understanding that a lower rate would be charged, and has continued to pay this rate only upon the theory that in the end it would be able to recover the excess over a reasonable charge.

Reparation will be awarded on all shipments where the freight money was paid within two years before the filing of the complaint, upon the basis of the rates here established. The complainant should prepare and file with the Commission a schedule showing in detail its shipments and the amount of reparation claimed, and a copy of this schedule should be served upon the defendants. If the parties agree upon the amount of damages on the basis herein stated the Commission will pass an order directing their repayment; otherwise further proceedings will be had to determine the amount.

15 I. C. C. Rep.

No. 1779.

MACGILLIS &amp; GIBBS COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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Submitted January 25, 1908. Decided February 8, 1909.

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Complainant shipped 1 carload of cross-ties from Sault Ste. Marie, Mich., to Thiensville, Wis., over defendants' lines, for the transportation of which it was charged a combination of locals of 20 cents per 100 pounds, whereas at the same time there was in effect a joint through rate of 13 cents over defendants' lines from Sault Ste. Marie to Milwaukee, Wis., Thiensville being intermediate to Milwaukee; *Held*, That because of dissimilarity of circumstances at Milwaukee the fourth section of the act is not violated; but that the present local rates of each of the defendants should be reduced 2 cents per 100 pounds. Reparation awarded.

*Kanneberg & Cochems* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

#### REPORT OF THE COMMISSION.

**PROUTY, Commissioner:**

On December 10, 1906, the MacGillis & Gibbs Company, a corporation, made shipment of 1 carload of cross-ties from Sault Ste. Marie, Mich., to Thiensville, Wis., weighing 42,200 pounds, upon which charges at the rate of 20 cents per 100 pounds were assessed and paid.

This shipment moved over the line of the Duluth, South Shore & Atlantic from Sault Ste. Marie to Champion, Mich., and over the line of the Chicago, Milwaukee & St. Paul from Champion to Thiensville. The rate assessed was a combination of locals, 9 cents up to Champion, and 11 cents from Champion to Thiensville. There was in effect a joint through rate of 13 cents over the lines of these defendants from Sault Ste. Marie to Milwaukee, Chicago, and points intermediate between Milwaukee and Chicago. Thiensville is 17 miles north of Milwaukee, upon the line of the Chicago, Milwaukee & St. Paul. It is therefore an intermediate point upon the line of the defendants to Milwaukee, and the complainant insists that no higher rate should be maintained at Thiensville than is applied at Milwaukee.

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The defendants justified the lower rate at Milwaukee by the existence of water competition between Sault Ste. Marie and Milwaukee and Chicago, the reality of which can not be denied. It is true that the Milwaukee rate is applied at various points in the vicinity of Milwaukee and between Milwaukee and Chicago where there is no actual water competition, but these points are, for the most part, reached by other lines of railway, so that the water competitive conditions at Milwaukee are perhaps extended to some or all of these localities. It seems probable that the circumstances and conditions under which this rate upon ties is made to Milwaukee and other points named may be different from those prevailing at Thiensville, and if that be so then the fourth section is not violated by the exaction of a higher charge at Thiensville.

It is therefore necessary for us to determine a just and reasonable rate for the movement of these ties from Sault Ste. Marie to Thiensville.

The local rate on ties from Milwaukee to Thiensville is 3 cents per 100 pounds. This would produce a combination upon Milwaukee of 16 cents per 100 pounds, and it is clear that the rate from Sault Ste. Marie to Thiensville ought not to exceed this combination.

Neither do we think that the Commission ought to establish a rate less than 16 cents. The distance is 430 miles, and traffic upon the portion of the lines involved is not heavy. There is a joint rate on lumber of 14 cents per 100 pounds from Sault Ste. Marie over the St. Paul, Minneapolis & Sault Ste. Marie Railway and the Chicago, Milwaukee & St. Paul Railway via Pembine, and for the last 175 miles traffic under that rate would move over the same route by which these ties came. The Commission has several times held that the rate on ties should not exceed that on rough lumber; but the distance via Champion and the Duluth, South Shore & Atlantic is nearly 50 miles greater, and the latter road, in our opinion, ought not to be forced to meet this lumber rate against its will.

This shipment was a through shipment made under a common arrangement and handled as such. The rates applied to it were the separately established rates of the defendants applicable to such through shipment. In our opinion the rate from Sault Ste. Marie to Champion, as applied to this shipment, ought not to have exceeded 7 cents per 100 pounds, and from Champion to Thiensville 9 cents per 100 pounds, producing a through charge of 16 cents per 100 pounds.

We find, therefore, that the Duluth, South Shore & Atlantic has exacted from the complainant company on account of the above shipment \$8.44 over and above its reasonable charges, and that the Chicago Milwaukee & St. Paul Railway has exacted \$8.44 over and above its reasonable charges, and that each of these companies should repay to

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the complainant the sums so severally unlawfully exacted, with interest at 6 per cent per annum from January 1, 1907.

We further find that, as applied to through shipments of ties from Sault Ste. Marie to Thiensville, 7 cents would be a reasonable charge upon the Duluth, South Shore & Atlantic from Sault Ste. Marie to Champion, and 9 cents upon the line of the Chicago, Milwaukee & St. Paul from Champion to Thiensville; and an order will be issued requiring these defendants to establish such rates, unless they see fit to voluntarily establish a joint through rate of 16 cents.

15 I. C. C. Rep.

No. 1484.

SALOMON BROTHERS &amp; COMPANY

v.

NEW ORLEANS &amp; NORTHEASTERN RAILROAD COMPANY.

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*Submitted October 6, 1908. Decided February 9, 1909.*

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Defendant's rate for the transportation of cotton linters from Meridian, Miss., to New Orleans for export, value limited to 2 cents per pound, is 30 cents per 100 pounds; when not so limited the rate is 46 cents per 100 pounds—this being the rate applicable to the transportation of cotton between the same points. Complainant tendered 150 bales of cotton linters to defendant's agent at Meridian for transportation to New Orleans for export and requested the lowest rate on cotton linters. Defendant assessed the 46-cent rate. Upon complaint questioning the application of the 46-cent rate and asking for reparation; *Held*, That it was the duty of the carrier's agent to apply to the shipment the lower of the two rates, and that reparation should be awarded to complainant on that basis.

*Albert Salomon* for complainant.*Ed. Baxter* and *R. Walton Moore* for defendant.

## REPORT OF THE COMMISSION.

*LANE, Commissioner:*

Complainant is a partnership, with head offices in New York, engaged in the exportation of cotton linters from Meridian, Miss., to various points in other states and to Europe. On November 27, 1907, complainant shipped 150 bales of cotton linters, aggregating 75,162 pounds in weight, from Meridian to New Orleans over defendant's line of railroad. Defendant's rate applicable to the transportation of cotton linters, value limited to 2 cents per pound, is 30 cents per 100 pounds; when not so limited the rate is 46 cents per 100 pounds—this being the rate applicable to the transportation of cotton between the same points. The complainant's agent applied to the agent of defendant railroad at Meridian for the lowest rate on cotton linters and was informed that the lowest rate was 46 cents per 100 pounds. The shipment went forward accordingly and charges were collected at the 46-cent rate. This resulted in the collection of some \$120.27 in excess of the charges which would have accrued if the shipment had been carried at the released rate.

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Defendant admits that its agent at Meridian failed to inform the complainant's agent of the 30-cent rate applicable to cotton linters with the value limited to 2 cents per pound. In a letter from the defendant's agent at Meridian it is stated:

Mr. Wilson did ask me for the lowest rate on cotton linters, and I presume it was then my duty to call his attention to the 30-cent rate in case the valuation was placed at 2 cents per pound, but I failed to do so.

Cotton linters are low-grade, short-staple cotton, a by-product of the cotton-seed oil mills. Their value varies from  $1\frac{1}{2}$  cents to 3 or 4 cents per pound, and the evidence before the Commission shows that the present value is not far from 2 cents per pound, the valuation upon which the released rate of 30 cents per 100 pounds is conditioned. It thus appears that the 30-cent rate has been fixed with reference to the real value of the commodity. There can be no doubt that if the shipper had been apprised of the 30-cent rate applicable to cotton linters not exceeding 2 cents per pound in value, the shipment would have gone forward at the released rate.

The evidence offered by the complainant, as well as by the defendant, shows that the universal practice has been to apply the released rate to shipments of cotton linters tendered as such to the carrier. It was never contemplated that cotton linters should take the cotton rate. The carriers recognized that the product could not move unless it was given the benefit of a lower rate. The provision that shipments not limited to a valuation of 2 cents per pound should take the cotton rate was intended primarily to prevent the shipment of cotton as cotton linters. Virtually, there was but one rate on cotton linters; and when the complainant's agent tendered this shipment and asked for the lowest rate on cotton linters, he was properly entitled to the 30-cent rate. The defendant arbitrarily applied the higher cotton rate when the lower rate on cotton linters was, in point of fact, applicable, and damages in the amount of \$120.27 with interest at 6 per cent per annum from date of payment will be ordered.

15 I. C. C. Rep.

No. 1490.  
MORSE PRODUCE COMPANY  
v.  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

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*Submitted December 2, 1908. Decided February 9, 1909.*

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Complainant, in a petition which did not claim reparation, had heretofore alleged that certain rates were unjust, unreasonable, and discriminatory; and the Commission, after full hearing, condemned said rates as unjust, unreasonable, and discriminatory, and prescribed maximum rates to apply thereafter in lieu of the rates so condemned. The carrier complied with the order of the Commission. Thereafter the complainant filed the present petition, based upon the shipments and facts set forth in its former complaint, and asked for reparation in an amount equal to the difference between the aggregate sum actually collected by the carrier under the old rates and the sum it should have collected if the rate which the Commission had declared reasonable had been in effect; *Held*, That the petition should state the whole case, including any reparation claimed, and that it does not necessarily follow that reparation will be awarded in all cases upon the basis of a rate prescribed to be observed thereafter. Upon the facts in this case reparation is denied.

*Bert O. Loe* for complainant.

*William Ellis* for defendant.

REPORT OF THE COMMISSION.

*COCKRELL, Commissioner:*

The complainant's petition, filed March 20, 1908, after stating its own corporate existence and that defendant is a common carrier, charges that during the years 1906 and 1907 it shipped over the lines of the defendant 43 carloads of butter and eggs consigned to or through Chicago, Ill., from Granite Falls, Minn., and that the schedule "A," attached to the petition, contains a correct list showing dates of said shipments, numbers of cars, rates charged per 100 pounds, and weights of shipments, and makes the same a part of the complaint, and that the amounts stated in the schedule as being charged per 100 pounds were actually paid by and exacted from the complainant and were at the rates of 46½, 56, and 59 cents per 100 pounds; that while these exactions were made upon the complainant

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the defendant was at the same time receiving and shipping from competitors of complainant butter and eggs from Pipestone, Minn., to Chicago, Ill., over its lines and charging therefor a rate of only 43, 46½, and 47 cents per 100 pounds; that Granite Falls and Pipestone are both on the lines of the defendant and Granite Falls is 535 miles from Chicago, while Pipestone is 576 miles from Chicago, and that the services, whether from Granite Falls or from Pipestone, during all the period were performed under substantially similar circumstances and conditions, and that the rates charged the complainant were unjust and unreasonable and subjected complainant and its business to unreasonable and unjust charges and undue and unreasonable prejudice and disadvantage, giving to other shippers and their traffic undue and unreasonable preference and advantage and exacting from complainant a greater compensation in the aggregate for the transportation of butter and eggs from the shorter distance, Granite Falls, than the defendant contemporaneously exacted from others for the transportation of a like kind of traffic for the greater distance, from Pipestone to Chicago, all in violation of the act to regulate commerce, particularly sections 1, 3, and 4.

The complainant then states that it had filed a complaint April 6, 1907, before the Interstate Commerce Commission, setting forth the facts complained of herein and that such proceedings were had on said complaint, that the Commission on December 4, 1907, made its report and order, finding, among other things, that the rate on butter and eggs in carloads shipped over the lines of the defendant from Granite Falls was too high by at least the difference between that rate and the rate on the same commodities in carloads from the more distant point of Pipestone, and that said proceedings were known as No. 1031, *Morse Produce Company v. C., M. & St. P. Ry. Co. et al.*, 12 I. C. C. Rep., 485. Complainant then states that by reason of the wrongful acts of the defendant in charging and exacting for the transportation of the butter and eggs, complainant has been damaged in the sum of \$981.95, with interest thereon from December 23, 1907, said sum being the difference in the aggregate between the sum charged for such transportation from the complainant and a reasonable charge in the aggregate for the service rendered, and prays an order of the Commission on the defendant for reparation in the above amount.

The answer of the defendant, the Chicago, Milwaukee & St. Paul Railway Company, was filed with the Commission April 9, 1908, and admits that the various rates charged by it for the transportation of butter and eggs from the points named were substantially as stated in the petition and claims that such rates were the lawful rates provided for in its tariff schedules and the only rates it could charge. It denies that the services from Pipestone and from

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Granite Falls to Chicago were performed under substantially similar circumstances and conditions or that the rates were unjust or unreasonable.

The hearing was had at Minneapolis, Minn., on June 15, 1908, both parties present. The defendant moved to strike from the schedule all the items alleged to have moved prior to March 20, 1906, on the ground that such items were barred by the limitation of two years and the complainant replied that it had no objection. The defendant also moved to dismiss the complaint on the ground that it is in effect an application to determine the reasonableness of the rates prior to the filing of the complaint and that the only authority conferred upon the Commission to pass upon the reasonableness of the rates is that conferred by section 15 of the act and by that section is limited to the consideration of rates for the future and not for the past. The defendant then admitted upon the record the movement of the cars set forth in schedule "A" at the weight and rate set forth in the schedule and that if the complainant is entitled to recover, the amount is \$884.87 instead of \$981.95 as set forth in the complaint. The defendant read into the record in this case the record in the former case, No. 1031, so that the entire matter might come up for consideration in this case. No further testimony was offered on either side. The defendant asked for an oral argument in addition to briefs. The briefs were filed and the oral argument was had in Washington on December 2 by agreement of both parties.

The findings of this Commission in the former case, No. 1031, are as follows:

It is evident that the rate on butter and eggs in carloads via the Chicago, Milwaukee & St. Paul Railway from Granite Falls to Chicago are too high by at least the difference between that rate and the rate on the same commodities in carloads from the more distant point, Pipestone, to Chicago by another branch of the same railroad. The just, fair, and reasonable rate for that carrier to observe in the future on this traffic between Granite Falls and Chicago, therefore, is 47 cents per 100 pounds, and an order will be entered accordingly. As to the other carriers named as respondents, it is evident that no further findings or order need be made and as to them the complaint may be dismissed.

Upon such findings it was ordered:

That the defendant, the Chicago, Milwaukee & St. Paul Railway Company, be, and it is hereby, notified and required to cease and desist, on or before the 1st day of January, 1908, from charging, demanding, collecting, or receiving for the transportation of butter and eggs in carload lots from Granite Falls, in the state of Minnesota, to Chicago, in the state of Illinois, its present rate of 50 cents per 100 pounds.

That said defendant be, and it is hereby, notified and required to establish and put in force on or before the said 1st day of January, 1908, and maintain during a period of at least two years thereafter, a rate not to exceed 47 cents per 100 pounds for the transportation aforesaid.

The complainant did not ask for reparation. The order of the Commission was complied with by the defendant filing with the Commission its Tariff I. C. C. No. B-700, effective January 1, 1908, naming rate of 47 cents per 100 pounds on butter and eggs from Granite Falls to Chicago.

The defendant contended that Congress having established the published rate as the lawful measure of payment for the service rendered, nowhere made any provision which permits its modification as to a shipment which has been moved under the tariff which, at the time it moved, was lawfully in force. The defendant urged that the clear intent of Congress was to fix the railroad rates of this country so absolutely that as to the past there could be no deviation in favor of any shipper from the rate published to all and no change for the future for any individual shipper in which all shippers should not receive the benefit alike.

The defendant contended that the language "that all charges made for any service rendered or to be rendered in the transportation, etc.," means all charges made for any service rendered at the present time or which is to be rendered. The Commission holds that it has ample power under the interstate-commerce law to pass upon the questions as to whether the rates, charges, and rules set forth in the tariff schedules filed with the Commission are unjust or unreasonable or discriminatory or preferential or prejudicial, and to award reparation or damages for violations of the interstate-commerce law, such as set forth in this complaint, and also to prescribe what shall be a reasonable and just rate for the future, and when a rate has been found and declared to be unreasonable and unjust, and a just and reasonable rate for the future has been established, to make reparation for any such damages as may have been caused thereby.

The provision in the act to regulate commerce, that—

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this act may be presented within one year.

would seem to meet and refute all the arguments presented by the defendant; but to make assurance doubly sure the following extract is quoted from the decision of the United States Supreme Court in the case of *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 442:

Although an established schedule of rates may have been altered by a carrier voluntarily or as the result of the enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions



of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of and awarding reparation to individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force.

When this Commission reduces a rate and prescribes what will be the just and reasonable rate or rates to be thereafter observed in such a case as the maxima to be charged, it does not necessarily follow that for any length of time prior to the date of the opinion reparation will be awarded upon the basis of the rate prescribed to be observed thereafter.

When complainant filed its original petition in said case, No. 1031, it only sought to have the rates from Granite Falls reduced to the rates from Pipestone to Chicago, and no claim for damages or reparation was made, and in the hearings in that case no evidence was offered to show any damage.

It is always best, in all proceedings before the Commission, for the complainant to state his whole case clearly and fully, and if he claims to have suffered damages, to state them. In the petition in the present case it is stated that while the complainant was charged 59 cents per 100 pounds from Granite Falls to Chicago the charge from Pipestone was only 47 cents, and while it was charged 56 cents the charge at Pipestone was only 43 cents, which was, during the pendency of the original petition, raised to 47 cents, thus showing variation in the charges at each point.

In the hearing in the original case it was stated on behalf of the defendant that the class rates from Chicago to Kansas City, Omaha, Sioux City, and Sioux Falls, on the Missouri River, were all the same—the basis of rates arrived at by all the lines in competition for business between such points. Pipestone and Sioux Falls were competitive points, and Sioux Falls fixed the rates to Pipestone. In the opinion in that case it was said:

It is evident that the rates on butter and eggs in carloads via the Chicago, Milwaukee & St. Paul Railway from Granite Falls to Chicago are too high by at least the difference between that rate and the rate on the same commodities in carloads from the more distant point, Pipestone, to Chicago by another branch of the same railroad. The just, fair, and reasonable rate for that carrier to observe in the future on this traffic between Granite Falls and Chicago, therefore, is 47 cents per 100 pounds, and an order will be entered accordingly.

In the case of *James & Abbot v. Canadian Pacific Ry. Co. et al.*, decided March 11, 1893, by this Commission, 5 I. C. C. Rep., 634, it is said:

The claim for reparation in this case was for a refund of the excess over reasonable charges collected by defendants subsequent to complaint. The substantial reduction announced by the carriers soon after the proceeding was intended by them to satisfy the complaint, and we are not satisfied, because

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that reduction as finally fixed was accidentally insufficient, that the order for further reduction should have retroactive effect. The claim for reparation must be denied.

In the case of the *Grain Shippers' Association of Northwest Iowa v. Illinois Central R. R. Co. et al.*, decided in the spring of 1899, 8 I. C. C. Rep., 183, the Commission says:

Certain parties filed intervening petition in this case, asking as reparation the difference between the rate actually paid by them and what would have been a reasonable rate. The rate paid by such parties was usually 19 cents from stations to which we now hold the 17-cent rate should be applied.

In order to grant such reparation it must be found that the rate was unreasonable at the time it was paid. This can hardly be done. These rates are not an advance over previous rates. Upon the contrary, the present tariffs are a substantial reduction from those in force before 1896. There is nothing unconscionable about the rates. The carriers may very well be sincere in their professed belief that the present tariffs are not too high. The case as presented by the complainants is by no means a clear one, and some of the facts upon which it is decided apply to the present and not to the past. We should hardly be warranted upon this record in holding that this 19-cent corn rate was unreasonable when put into effect, November 2, 1896, and in determining when, under changing conditions, it became unreasonable, we are satisfied that it will be fairer to all parties to apply the proposed reduction to the future only. The claims for reparation are denied.

In the case of *Johnson v. St. Louis & San Francisco R. R. Co. et al.*, decided April 3, 1907, 12 I. C. C. Rep., 77, 78, the Commission ordered reduction in the rates and said:

In our opinion these rates are not excessive. They have probably been somewhat higher than they should have been in the past, but we can not affirm that they have been unreasonable with sufficient confidence to justify us in awarding reparation. It does not necessarily follow because a rate is unreasonable to-day that it has been unreasonable at all times in the past.

In the case of the *Dallas Freight Bureau v. Gulf, Colorado & Santa Fe Ry. Co. et al.*, decided June 10, 1907, 12 I. C. C. Rep., 228, in which it was held that the rates were unreasonable and were ordered to be reduced, the Commission said:

There remains for consideration the question of reparation. After this case had been fully heard and taken under advisement such a claim was brought to our attention by letter. No such claim is made on the original complaint, nor was the testimony on either side directed to any such issue. This suggests that it may be an opportune occasion to say that we are not disposed to try complaints by piecemeal. Nor is it proper, unless some reasonable ground for it be shown or the Commission itself has so ordered, to bring forward a claim for reparation after a complaint has been heard and taken under advisement. Under all the circumstances disclosed upon this record we are not inclined at this time to entertain a claim for reparation in connection with this complaint or with the rates complained of.

In the case of the *Farmers' Warehouse Co. v. Louisville & Nashville R. R. Co.*, decided October 8, 1907, 12 I. C. C. Rep., 459, in which a 15 I. C. C. Rep.

reduction was ordered because of the unreasonableness of the rate, the Commission said:

It does not follow, as a matter of course, where the Commission finds that the ends of justice require the reduction of a rate complained of that reparation must in all cases be ordered on shipments previously made. Under all the circumstances appearing in this case we feel constrained to deny the claim for reparation on shipments made prior to the filing of the complaint.

Under all the facts and circumstances in this case the Commission does not feel justified in making any order for reparation, and such order is denied.

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No. 1821.  
BALTIMORE CHAMBER OF COMMERCE  
v.  
PENNSYLVANIA RAILROAD COMPANY ET AL.

*Submitted December 31, 1908. Decided February 8, 1909.*

The defendants issue certificates for the actual weight of grain shipments going into their elevators at Baltimore, and on that weight assess their transportation and elevator charges; but each certificate shows on its face the "scaleage deduction" that will be made, on the basis of published tariff estimates, when the grain is delivered out of the elevator to the certificate holder. Upon complaint that these deductions are arbitrary and constitute an illegal appropriation of the property and moneys of the complainant's members and others who ship grain to Baltimore, *Held:*

1. That the defendants by this practice are not exacting from grain shippers either a rate in the form of grain or an addition to a rate, and therefore the question presented is not one of rates.
2. Neither is the practice one affecting rates, as the tariff rules are simply notice that while the shipment weighed so much when taken into the elevator, the grain will weigh so much less when it goes out, because of the weight of dirt, dust, chaff, and moisture, which, in the process of elevation, will disappear and can not therefore be delivered to the holder of the elevator certificate when the grain is ordered out. So long as the deductions are based on reasonable estimates of the weight of foreign matter that is unavoidably eliminated and lost in the process of elevation the practice is not one that affects rates or has any real relation to rates.
3. The practice of one defendant herein of supplying at its New York elevators enough grain to make up the weight of dirt, chaff, and moisture lost in the process of elevation is a practice affecting rates, in that it is an advantage or benefit that the shipper gets under the published rate; but the charge that the making of deductions at Baltimore and not at New York is unduly prejudicial to Baltimore is not now considered, the record not having been made with a view to the disposition of the complaint upon that ground.

*Arthur George Brown, John B. Daish, and R. E. Lee Marshall* for complainant.

*Shirley Carter* for Central Elevator Company of the city of Baltimore.

*George Stuart Patterson* for Pennsylvania Railroad Company and Northern Central Railway Company.

*William Ainsworth Parker, Hugh L. Bond, and Marsden Smith* for Baltimore & Ohio Railroad Company.

## REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In this proceeding the Chamber of Commerce of the city of Baltimore, on behalf of itself, its members, and all persons who ship grain to the port of Baltimore from interstate points of origin, brings to our attention certain provisions in the tariffs of the defendant rail carriers that became effective on November 16, 1908, under which certain "scaleage deductions" are made upon grain passing through their elevators at that port. It is agreed that these elevators are part of the terminal facilities of the rail defendants, and that all charges or exactions imposed upon grain received, elevated, stored, or otherwise handled therein, and all practices in relation thereto, are within the control either of the Pennsylvania Railroad Company and its subsidiary lines or of the Baltimore & Ohio Railroad Company. We shall therefore deal with the complaint as if those two companies only were before us as defendants.

It is asserted by the complainant that the term "scaleage" was unknown in the grain trade until it appeared in the published tariffs to which reference has been made. It seems, however, that the practice of making what is equivalent to scaleage deductions has gone on at Baltimore for thirty-five years and without complaint to this Commission until it was published by the defendants in their tariffs. There is, in fact, an intimation in the brief of counsel for the complainant that it is not the deductions that disturb the Baltimore grain merchants so much as it is the fact that under the published tariffs—

open and notorious notice is given to all the world that the merchants of Baltimore require more grain for their money than do other competing markets. By means of the tariff the city is advertised as being compelled to require more grain than is either to be accounted or paid for.

The record also shows that until within a few years the practice had been followed at Chicago, St. Louis, East St. Louis, Peoria, Toledo, Cincinnati, and elsewhere under the name of "dockage" or "take-off" and similar designations, but has now been abandoned, the elevator companies at those points preferring to absorb the loss which the failure to make deductions entails upon them.

Experience has demonstrated that in the handling of grain into and out of an elevator by the various mechanical devices there is a certain diminution or loss in weight due to the fact that in the process of elevating grain out of cars or vessels into an elevator, and in the process of turning it over or otherwise treating it while in the elevator, and in the process also of loading it out of the elevator for further carriage by rail or by water, the dust, dirt, and chaff gathered up with it in the harvest and so carried along from the point of origin

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to the elevators, are separated from the grain itself and are lodged on the elevator floors and walls of the bins and in the spouts and elsewhere, and thus are not discharged with the grain when loaded out of the elevator. The result is an appreciable loss in the weight of the grain as it goes out. Experience has also shown that there is a certain amount of moisture in the grain when harvested and brought to the elevators that is gradually eliminated by evaporation as the grain is dried out by natural conditions or by artificial means. The drying out is also furthered by turning the grain over to prevent heating and in treating it in various ways while in storage. When the grain comes to the elevator by water it absorbs additional moisture, and consequently there is a greater loss in weight when it is discharged out of the elevator. The loss varies with the kind and quality of the grain and the conditions under which it was harvested and transported and is larger in the case of corn than in wheat.

All this has long been understood both by the shippers of grain and by elevator and railroad officials. It could not well escape their observation, for, as a rule, when grain is loaded into an elevator from cars or vessels and later loaded out, the weight as ascertained in the process of taking it into the elevator is greater than the weight ascertained while it is subsequently being loaded out of the elevator. When the grain is ordered out the elevator companies must therefore deliver a less weight of grain than they have received, or must go into the market and purchase enough grain to make up the deficiency. While it is doubtless true that small particles and small kernels of grain are unavoidably lost in passing grain through an elevator, theoretically the deductions made by the defendants on account of scaleage or loss in weight are for the dust, dirt, chaff, and moisture that are eliminated from the grain in the process. There is no real abstraction of any part of the grain itself. If elevators could be operated with absolute perfection, it is conceivable that every kernel of grain taken into an elevator bin in a particular shipment could be delivered to the owner when ordered out, and on the bottom and walls of the bin and in other parts of the elevator would be found a certain weight of dust, dirt, and chaff, leaving unaccounted for only the weight of the moisture that has been evaporated into space as the grain was gradually dried out. The loss in weight is therefore one that is incident to the nature of the property and inseparable from the present methods of handling it.

There is some evidence tending to show that at Chicago the chaff and dust and dirt and small particles of grain that do not go out of the elevator in the process of unloading become a source of profit, and are sold by the elevators to sheep feeders and others for as much in some cases as \$17 per ton. It is also said that at St. Louis the floor

sweepings of elevators bring as much as 50 cents per 100 pounds. But the elevators of the defendants at Baltimore enjoy no such revenue. It does not appear that with the elevator methods there in use any by-product of value remains. On the contrary, the record shows that the dust and dirt and chaff and floor sweepings are thrown into the harbor in such quantity as to have brought protests from the harbor master against the filling up of the harbor in that manner. Obviously the grain is better when freed from dirt and dust and other foreign matter, but it is intimated that the practice obtains in some places of throwing back into the grain as it leaves the elevator enough dirt and dust to make up the difference between the ingoing and outgoing weights.

As has been stated, the loss in weight is usually larger with corn than with wheat, because corn has the quality of absorbing more moisture than does wheat. It is also more liable to become heated in the elevator and must therefore be turned over more frequently. Corn is also frequently dried out by artificial heat in order to put it in a condition for more advantageous sale. At the end, therefore, of any definite period of time the shortage in corn on hand in an elevator as compared to the amount represented by outstanding certificates is usually considerable. It is said that on July 1, 1908, there was a shortage of as much as 10,000 bushels of corn in the elevators of the defendant, the Baltimore & Ohio Railroad Company, at Baltimore. It occasionally happens, on the other hand, that there is an overplus of wheat in the elevators of the defendants at that point—that is to say, having delivered out of their elevators the weight of wheat called for by the outstanding elevator certificates, less the deductions authorized by the tariff schedules and noted on the certificates, the defendants find some wheat still remaining in their elevators. This is due to the fact that some grain is better in quality than other grain, or is harvested and transported under conditions that keep it more free from dust and dirt and chaff and moisture than is usually the case. Doubtless special weather conditions prevailing during the harvest and during the period of transportation affect the weight and tend to minimize the quantity of dirt and dust that is gathered up and accumulated with the wheat. Absolute precision in the adjustment of a schedule of deductions so as to meet all these varying conditions is beyond reasonable possibility.

We shall not enter into the details of the tariffs under which the scaleage deductions are made at Baltimore. Suffice it to say that they vary in amount according to the kind of grain, whether wheat, corn, barley, oats, etc., and also according to its quality; they are larger on water-borne grain than on grain carried to Baltimore by

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rail. The minimum deduction is 30 pounds per car of 66,000 pounds or less on all grain except corn. The maximum deduction is 150 pounds for each 1,000 bushels of corn. The rules provide also that the defendants will issue elevator certificates for the actual weight of the grain as weighed into the elevator, and on that amount both the transportation and elevation charges are based; but each certificate so issued by the defendants shows on its face the weight of the deduction that will be made, on the basis provided in the published schedule, when the certificate is surrendered and the grain is delivered out of the elevator to the certificate holder. The complainant charges that the deductions thus provided in the tariffs of the defendants are arbitrary and unjustifiable and constitute an illegal appropriation of the property and moneys of the complainant's members and others who ship grain to Baltimore.

If the record disclosed that the defendants, under specific tariff authority, abstracted a fixed amount of grain from interstate shipments to Baltimore, we should be compelled, both under section 1 and section 6 of the act, to hold that the complaint presented a rate question. The abstraction, under the terms of a published tariff, of a specific amount of grain would in a legal sense be an exaction from shippers of an additional rate, or of something very closely analogous to a rate. The grain so taken from grain shipments would be a benefit and an advantage to the carrier to the extent of its market value, and to the same extent would be a disadvantage to the shipper. We do not understand, however, that the record shows any such state of affairs. The defendants do not absorb any grain from their shippers. The record does show, as stated, that occasionally they find an overplus of grain in their elevators, the result of special conditions that can not be accurately met by any general tariff provision estimating the weight deductions to be made on account of dust, chaff, dirt, and moisture in grain shipments; but the usual and ordinary result of the operation of their elevators is a deficit in grain even after the weight deductions provided in their published tariffs have been made. This deficit the defendants have to make good by buying grain in the open market. It follows, therefore, that they are not exacting from grain shippers either a rate or an addition to a rate, in the form of grain. We therefore hold that the question before us is not a question of rates, and this seems to be conceded by counsel for the complainant when he says "that the scaleage deductions are not rates, charges, or exactions within the meaning of the acts of Congress to regulate commerce."

But counsel contends that the tariff rules of the defendants providing for the deductions are a regulation or practice affecting rates, and as such are unjust and unreasonable and unduly discriminatory,



and unduly prejudicial to the grain trade of the city and port of Baltimore, and are unduly preferential to the grain trade of competing localities. We see no ground upon which this contention can logically be supported. The deductions made by the defendants are not deductions of grain. The tariff rules and the notation on the elevator certificates are simply notice to the holder that while the shipment weighed so much when taken into the elevator, the grain will weigh so much less when it goes out, because of the weight of dirt, dust, chaff, and moisture which, in the process of elevation, will disappear and can not therefore be delivered to the holder of the elevator certificate when the grain is ordered out. So long as the practice in good faith is based on a reasonable estimate of the weight of foreign matter that is unavoidably eliminated and lost in the process of elevation, we have not been able to see how it can be said to be one that affects rates or has any real relation to rates.

It is true that the transportation and elevation charges are collected on the full weight of the grain as it goes into the elevator, but that is defensible, technically at least, because the dust, dirt, chaff, and moisture are carried along and elevated with the grain, and for this service the carrier is entitled to make a charge. But the carrier can not deliver out of the elevator that which, from the nature of the commodity and as an unavoidable incident in the handling of it, has disappeared and gone beyond its power to deliver; and in demanding on behalf of its members the delivery in grain of the full ingoing weight of the shipment the complainant is really demanding grain in exchange for the same weight of chaff, dust, dirt, and moisture. Undoubtedly the carrier must deliver out of the elevator the same quality and quantity of grain that went in. But experience has shown that a distinction may be drawn between the weight of the shipment and the weight of grain in the shipment, and in their schedule of deductions the defendant rail carriers have made that distinction. Whether it is a broad and liberal policy to do this in order to guard against a loss, say of 50 cents on a carload of 66,000 pounds of wheat that may yield freight earnings of from \$150 to \$200, is a question that is not before us or within our province to determine.

Enough has been said to indicate our view that, so far as the complaint attacks the practice of making scaleage deductions based on reasonable, estimated weights, it does not present a question of rates or of rules and practices affecting rates. It is a question of bailment only. It is not a taking of grain but merely the unavoidable elimination of foreign matter in the grain. Whether those who ship grain to Baltimore are entitled to have grain returned to them in place of the chaff, etc., that has been lost, is not a matter of transportation under the act, but a question, if a disputable point at all,

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of property rights that must be disposed of in the courts under the general law. Moreover, as the practice is not a matter of rates, we see no reason, as at present advised, why the amount of the weight deductions made by the defendant carriers should be published in their tariffs. So long as they are based, as we find them to be, on reasonable estimates of the weight of foreign matter that is lost in the process of elevation, no question of transportation is involved.

The charge that the practice of making deductions at Baltimore and not making them at New York and elsewhere is unduly preferential of the latter ports and unduly prejudicial to Baltimore is a different matter and one that is not free from difficulty. Dealing with that phase of the case briefly and somewhat categorically, it may be said that if the rail defendants, or either of them, purchase grain in the market to make up, for shippers to the port of New York, the deficiency in the outgoing elevator grain weights caused by the elimination of chaff, dirt, dust, and moisture in the process of elevation, it is beyond question a practice that does affect the rate. Whatever it may be called, whether a service or a privilege, the result to the shipper is of appreciable value. He gets from the defendants more for the rate that he pays than he otherwise would get. The carrier bears the loss that the shipper would otherwise have to bear. And so, although the matter is a small one and in a court of law might well be disposed of under the maxim *de minimis non curat lex*, an accurate solution of the problem before us requires us to hold that while a practice that involves the return to the certificate holder of the actual quantity of grain that went into the elevator—that is to say, the grain with the dirt taken out of it—is not a practice that affects rates, a practice, on the other hand, that requires the carrier to give to the certificate holder enough grain to take the place of the dirt, dust, etc., taken out of the shipment in the process of elevation, is a practice affecting rates. It is an advantage or benefit that the shipper gets at the hands of the carrier under the published rate. And if the same advantage or benefit is denied to shippers of grain to another port which for many years has been a competing point in the grain traffic, enjoying a fixed relation of rates with other Atlantic ports, the relation is at once affected.

The undue discrimination which is alleged by the complainant is therefore properly before us, and small though it may seem it may be of no small importance to the city of Baltimore, for it is our observation that a commodity that moves in as large volume as grain is more or less sensitive to small fluctuations and differences in rates. The Baltimore & Ohio owns no elevators at New York City and none at Philadelphia, and therefore can not be guilty of discriminating

in favor of those ports as against Baltimore as charged in the complaint. The Pennsylvania, however, does own and operate elevators at New York City, and it meets the charge of discrimination with the suggestion that all such differences in the local practices at the two ports are included and accounted for in the differential in the grain rates to Baltimore. As the practices of that defendant with respect to scaleage deductions have differed at the two ports for many years, we are inclined to think that the suggestion has much force. That defendant also urges that the practice at its elevators in New York City, of supplying an equal weight of grain for the dirt, chaff, etc., that is lost, is compelled by the competition of elevators handling water-borne grain. This may be true, but we consider neither of these points at this time, for the record was not made with the view to a disposition of the complaint by the Commission on either ground. Our suggestion is that the defendants withdraw the provisions complained of from their tariffs, and the complainant may raise the questions now left undisposed of, upon further suggestions to be filed herein later, if it shall appear that the interests of those whom it represents in this controversy shall so require.

15 I. C. C. Rep.

No. 1903.  
GENERAL CHEMICAL COMPANY  
v.  
NORFOLK & WESTERN RAILWAY COMPANY ET AL.

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*Submitted January 15, 1909. Decided February 1, 1909.*

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A tariff naming a rate per ton on a commodity and providing that the minimum carload weight shall be the marked capacity of the car gives the shipper the right to demand any car of recognized standard dimensions suitable for the carriage of that commodity. If upon reasonable demand the carrier can not supply a car of the particular size ordered, it is its duty nevertheless to accept the shipment and move it in any available car or cars, applying the rate on the basis of the marked capacity of the car ordered.

*Steele, Otis & Hall* for complainant.

*Ed. Baxter* and *R. Walton Moore* for Norfolk & Western Railway Company.

*Geo. F. Brownell* and *H. A. Taylor* for New York, Susquehanna & Western Railroad Company.

*George Stuart Patterson* for Pennsylvania Railroad Company and Cumberland Valley Railroad Company.

REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

Under a published tariff naming a joint through rate of \$3.97 per gross ton and providing that the minimum weight of a carload shipment should be the "marked capacity of the car," the complainant on October 26, 1906, shipped a carload of sulphide of iron, weighing 53,550 pounds, from Pulaski, in the state of Virginia, to Edgewater, a station in New Jersey on the line of the New York, Susquehanna & Western Railroad Company, one of the defendants. It is alleged in the petition, and as we understand the record the fact is not denied, that the complainant had ordered a car of 60,000 pounds capacity for the shipment. But the Norfolk & Western, which was the initial carrier in the movement, found that its convenience would best be served by using a car of the marked capacity of 80,000 pounds. Such a car was set at the loading point and the shipment was loaded into it and so went forward. At destination the

charges were collected on the basis of an 80,000-pound shipment, although before the car was moved from the loading point the Norfolk & Western agreed with the complainant that the 60,000-pound minimum would be applied. These facts are admitted on the record by the Norfolk & Western and by the New York, Susquehanna & Western. The third defendant, the Pennsylvania, disclaims any knowledge or information as to the conditions and understandings under which the shipment was received by the initial carrier and started on its journey in an 80,000-pound car.

Assuming as we do that the matter has come before us in this form in good faith, we have no hesitation in holding that the complainant is entitled to reparation on the basis of a 60,000-pound shipment. The rate as published amounts in substance to an offer to the shipping public by the three carriers forming the through route and naming the joint through rate to transport sulphide of iron between the points in question in any car of recognized standard dimensions or capacity that the shipper may demand if suitable for the carriage of the commodity that he has ready for shipment. This offer the law requires the carriers from every point of view to make good; and if a car of a particular standard size or capacity is not available upon the reasonable demand of a shipper for a car of that size, it is the duty of the carriers nevertheless to accept and carry the shipment in any car or cars that are available for the movement, assessing the charges on the basis of the marked capacity of a car of the dimensions or capacity demanded. It is scarcely necessary to observe that it lies within the power of carriers to protect themselves against unreasonable demands by shippers under such a rule by confining its operation, under proper notice in their tariffs, to cars having a marked capacity between certain maximum and minimum limitations. An analogous question arose in *Pacific Purchasing Company v. Chicago & Northwestern Railway Company*, 12 I. C. C. Rep., 549, and the ruling then made would seem to control here.

It follows from what is here said that the defendants have overcharged the complainant on the shipment in question. We therefore find that the complainant is entitled to reparation in the sum of \$25.36, being the difference between the charges actually collected, amounting to \$131.70, and the charges that ought to have been collected on the basis of a car of a capacity of 60,000 pounds, as ordered.

An order will be entered in accordance herewith.

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No. 1123.

AUGUST J. BULTE MILLING COMPANY ET AL.

v.

CHICAGO & ALTON RAILROAD COMPANY ET AL.

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No. 1129.

SAME

v.

SAME.

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*Submitted May 16, 1908. Decided February 8, 1909.*

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Complainants concede the reasonableness of the proportional rates applicable east of Chicago and the Mississippi River in making up the through rates on flour from the Missouri River to the seaboard, but condemn the proportional rates applied between the rivers and to Chicago as unreasonable in themselves and unduly discriminatory when compared with the proportional rates from Minneapolis to Chicago; *Held:*

1. The circumstances and conditions surrounding the transportation of flour through Chicago from Minneapolis to the seaboard for export or domestic consumption are substantially dissimilar to the circumstances and conditions surrounding the traffic through Chicago from Missouri River points, in that the lower proportional rates from Minneapolis to Chicago are the direct result of the competition of lake and rail routes.
2. Where a well sustained water competition exists that takes a substantial portion of the tonnage and could readily prepare to take it all, if left in undisturbed control of the traffic, the rail line, without necessarily subjecting itself to charges of discriminating against other localities, may adjust its rates so as to fight for the whole tonnage the moment it really feels the effect and influence of its competitor's rates; it need not wait, as complainants contend, until the water line is prepared to take half the tonnage.
3. While a division of a through rate long accepted by a carrier may often be pertinent evidence, it is not a sound final test of the reasonableness of the through rate itself. Nor is the rate per ton per mile the generally accepted basis in this country for making up interstate rates.
4. The manufactured product commonly takes a higher rate than the raw material from which it is made. But the maintenance of a parity of rates on wheat and flour between the Missouri River and the Atlantic seaboard tends to equalize conditions at all points at which flour-milling enterprises exist, and seems on many grounds to be a sound rate policy in that territory.

15 I. C. C. Rep.

5. Complainants' suggestion that the flour-milling industry of this country can be fostered by an order requiring carriers to the Atlantic seaboard to maintain a lower rate on flour than on wheat involves a matter of national policy beyond the authority of the Commission to adopt until the Congress, by adequate legislation, has made that a rule of transportation.

*John H. Atwood* for complainants.

*Henry S. Robbins* for Board of Trade of the city of Chicago, intervener.

*J. C. Lincoln* for Traffic Bureau, Merchants' Exchange of St. Louis, Missouri, intervener.

*H. G. Wilson* for Kansas City Transportation Bureau of Commercial Club, intervener.

*Albert E. Clarke* and *Kingman, Crosby & Wallace* for Chamber of Commerce of Minneapolis, intervener.

*Wallace M. Bell* for Chamber of Commerce of Milwaukee, intervener.

*C. M. Miller* for Chicago & Alton Railroad Company.

*Albert H. Harris, Clyde Brown, and Glennon, Cary, Walker & Howe* for New York Central & Hudson River Railroad Company; Lake Shore & Michigan Southern Railway Company; Michigan Central Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Erie & Western Railroad Company; Chicago, Indiana & Southern Railroad Company; Indiana Harbor Railroad Company; and New York, Chicago & St. Louis Railroad Company.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*E. B. Peirce* and *M. L. Bell* for Chicago, Rock Island & Pacific Railway Company.

*Martin L. Clardy, James O. Jeffery, and E. B. Boyd* for Missouri Pacific Railway Company.

*Hale Holden, George H. Crosby, and O. M. Spencer* for Chicago, Burlington & Quincy Railroad Company.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

These two proceedings were instituted by a large number of individuals, copartnerships, and corporations engaged in the flour-milling industry in the states of Kansas, Missouri, and Oklahoma, and were heard upon one record and as one complaint, the relief sought being a reduction in the through rates on flour, and certain other grain products taking flour or feed rates, originating at Missouri River points and destined to the Atlantic seaboard for domestic consumption or for export. The controversy relates more particularly to flour rates and those rates only will be referred to in disposing of the matter. After

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the case was at issue sixty or more of the rail and water carriers participating in the flour traffic east of the Mississippi River and Chicago were brought into the proceeding as defendants by order of the Commission. The original defendants were the eight leading railroad systems that connect Kansas City and other Missouri River gateways with Chicago and St. Louis; and they are the carriers whose revenues are involved in the issue as made on the record.

The standard all-rail through rates to the Atlantic ports from Kansas City, Leavenworth, Atchison, and St. Joseph are combinations based on St. Louis or Chicago. Although the complainants seek a reduction in the through rates on flour, they concede the reasonableness of the proportional rates applicable east of Chicago and east of the Mississippi River, and condemn as unreasonable and excessive only the proportional rates that are applied between the rivers, or to Chicago, in making up the through rates to the seaboard. That is the real point in controversy. The through rates are attacked only because that part of the through rates is alleged to be excessive.

Upon his opening argument, counsel for complainants, in explaining the object and scope of the proceedings, said:

It is not our purpose to assail the propriety of the rates farther east than Chicago, or farther east than St. Louis; and the whole controversy that we tender and present to our adversaries is in relation to the fairness of rates obtaining between the rivers and between the Missouri River and Chicago.

The specific complaint that requires examination, therefore, is the allegation that the proportional rates to Chicago and to the Mississippi River crossings, on through shipments of flour moving to the seaboard through those gateways, are excessive and unreasonable. It is alleged that they are unreasonable and therefore unlawful (1) in and of themselves, and (2) relatively, as compared with the rates on flour from Minneapolis, or rather with that part of the through rates from Minneapolis to New York, which the carriers retain for their services west of Chicago. The importance of the inquiry is indicated by the numerous intervening petitions on file in the record, in which the milling and grain shipping interests of Chicago, St. Louis, Milwaukee, and Minneapolis array themselves as defendants in the proceeding and protest against the reduction in rates which the complainants propose. It is particularly to be noted that the Board of Trade of Kansas City, where the principal complainant is engaged in business, has also put its protest upon the record.

The original complaint is dated on May 31, 1907, and was presented to the Commission at or about that time. Because of some defect in form or substance it was returned for correction, and was not actually filed until June 27, 1907. During that interval there came to the notice of the complainants a tariff that had been filed, and which became effective on July 1, 1907, the purpose and result of which was



to raise the through rates on flour from Missouri River points to the seaboard to the extent of  $1\frac{1}{2}$  cents per 100 pounds. This was accomplished by adding that amount to the proportional of  $7\frac{1}{2}$  cents theretofore applying between the rivers, and to the proportional of  $10\frac{1}{2}$  cents per 100 pounds theretofore applying from the Missouri River to Chicago. The previous through rate to the Atlantic ports on flour intended for domestic consumption had been  $28\frac{1}{2}$  cents, and on flour intended for export  $24\frac{1}{2}$  cents. The addition of the  $1\frac{1}{2}$  cents to the proportionals into Chicago and to the Mississippi River crossings resulted in a new through domestic rate of  $29\frac{1}{2}$  cents per 100 pounds and a new through export rate of  $25\frac{1}{2}$  cents. To meet this increase in the rates attacked in the first petition the complainants filed a second petition which, although given a new docket number, is really supplemental to the first petition and was heard with it. Since the argument was had, there has been a further change in the flour rate, involving a reduction of one-half cent on domestic shipments. To this reference will later be made. For the present we shall consider only the  $29\frac{1}{2}$ -cent rate in force on domestic shipments at the time the argument herein was had, and the  $25\frac{1}{2}$ -cent rate then and now in force on export shipments, those being the through rates to which objection is made on the pleadings.

Out of the  $29\frac{1}{2}$ -cent rate formerly in effect as stated, the carriers between the two rivers received a division of 9 cents, while the carriers east of the Mississippi River retained  $20\frac{1}{2}$  cents. When the shipment went through Chicago, the carriers west of that point retained 12 cents and the carriers east of Chicago received  $17\frac{1}{2}$  cents. When flour moves to the seaboard for transshipment to a foreign destination, the through rate from the Missouri River cities is  $25\frac{1}{2}$  cents per 100 pounds, of which the carriers west of the Mississippi River receive a division of 9 cents, and those east of the river  $16\frac{1}{2}$  cents; when the shipment goes through Chicago, the carriers west of that point receive 11.7 cents and those east of Chicago 13.8 cents.

In contrast with these through rates of  $29\frac{1}{2}$  cents on domestic and  $25\frac{1}{2}$  cents per 100 pounds on export flour shipped from Missouri River points to the seaboard, and in support of their contention that they are discriminatory as against those gateways, the complainants point to the fact that the all-rail rate on flour from Minneapolis to New York, upon a shipment for domestic consumption, is 25 cents per 100 pounds, and  $21\frac{1}{2}$  cents when intended for export. The distance of Minneapolis and Kansas City from New York is substantially the same, the short-line mileage of the former being 1,332 miles and of the latter 1,342 miles. The complainants therefore demand the benefit from Kansas City of the same rates that are accorded to Minneapolis. Out of those rates, 25 cents on domestic and  $21\frac{1}{2}$  cents on export shipments of

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flour from Minneapolis, the carriers east of Chicago take 16.7 cents and 14 cents, respectively, for their haul from Chicago to the seaboard. The carriers west of Chicago receive for their haul into that point 8.3 cents on domestic and 7½ cents on export shipments, as compared with 12 cents and 11.7 cents, respectively, received by the carriers west of Chicago for their haul into that point from Kansas City.

It is this comparison of the proportional rates from the two points into Chicago that forms the gravamen of the complainants' case. Minneapolis is 420 miles distant from Chicago, and Kansas City 458 miles. With respect to the length of haul Kansas City millers are at a disadvantage to the extent of 38 miles. This small difference in mileage, the complainants insist, by no means justifies so large a difference in rates. They contend therefore that the proportions which the carriers retain for the transportation of the Kansas City flour into Chicago are relatively unreasonable, unjust, and unduly discriminatory, and consequently affect the through rates of which they form a part with the same infirmity. It is earnestly insisted that the advantage which the Minneapolis millers have, of 4½ cents in the domestic through rate and of 4 cents in the through rate on export shipments, creates conditions that make it impossible for the complainants successfully to compete with Minneapolis flour and, more especially in the foreign markets. It is the export rate in fact in which the complainants most strongly urge a reduction. The Minneapolis mills alone, if run at full capacity, could absorb fully 80 per cent of the total production of wheat in the northwestern states; and the aggregate capacity of all the mills in the country is twice as great as the domestic flour consumption. It is therefore highly desirable to American millers to find a foreign market for their large excess output. During the last year and a half many of the millers, including those at Minneapolis and Kansas City, have observed a decrease in the volume of their export shipments, a result probably due to the increasing consumption of Argentine and Russian wheat by foreign millers. And the special object of the complainants in bringing this proceeding was to secure more favorable export rates for the Missouri river millers, and thus be able to widen their foreign market.

Upon the general grounds thus briefly outlined the complainants contend that the through rates to the seaboard from those points are unreasonable in themselves and are unduly discriminatory when compared with the Minneapolis rates. In meeting these issues the defendants insist (1) that four of the defendant lines do not reach Minneapolis, and therefore can not be said to discriminate in their rates in favor of that market as against the Kansas City market; (2) that complainants base their case on the allegation that a proportional

rate, forming a part of a through rate, is unreasonable, and have not shown that the through rate of which it forms a part is unreasonable and therefore unlawful; and (3) that the lower proportional rates obtaining from Minneapolis to Chicago are the direct results of water competition.

Much testimony was introduced by the defendants in justification of the present relation of rates on flour as between the two competing milling centers, and by the complainants in support of their contention that the maintenance of lower rates from Minneapolis than from Missouri River points is a violation of section 3 of the act which materially affects the prosperity of the Kansas City millers. Although the petition itself is silent on the point, the complainants in their testimony laid some stress on the alleged disadvantage under which Kansas City millers labor in competing with Minneapolis mills in supplying the large and desirable local flour market at Chicago. They also contend that the Minneapolis millers enjoy the advantage of having three sources from which to secure their supplies of wheat, namely, the northwest, the southwest, and Canada, while the Missouri River millers can draw their supplies practically from the southwest only. The complainants also insist that in respect of mileage, grade, and other factors that affect the cost of operation and maintenance there are no such differences between the roads running into Chicago from Minneapolis and those connecting the Missouri River crossings with Chicago as to justify the disparity in the proportional rates which the two competing milling interests are required to pay on their respective domestic and export flour shipments passing through Chicago to the seaboard.

It is not our purpose however to consider these contentions in detail. The essential question before us is whether the relation between the proportional rates from Minneapolis to Chicago and the proportional rates from Kansas City to Chicago creates an undue and unlawful discrimination against the Missouri River millers, as claimed by the complainants, or whether it is a rate adjustment based on the compelling force of water competition, as alleged by the defendants. On that question a careful review of the record has led us very definitely to the conclusion that the proportional all-rail rates to Chicago on domestic and export shipments of flour from Minneapolis to the seaboard are fixed by the competition of the lake and rail routes.

While the Commission has heretofore made no formal investigation of the effect of such competition on the flour traffic, its effect on the all-rail rates on wheat was considered in *Cannon Falls Farmers' Elevator Co. et al. v. C. G. W. Ry. Co. et al.*, 10 I. C. C. Rep., 650, where Chairman Knapp, speaking for the Commission, and having reference, as applied to the wheat traffic, to a condition and a rate

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adjustment having some features in common with those obtaining here as to flour, said (p. 653):

The proportional rate of  $7\frac{1}{2}$  cents from Minneapolis to Chicago is forced by the competition of lines leading to Duluth and other lake ports and the competition of lake lines to Chicago, Buffalo, and other eastern points; and even with that low rate in effect on the all-rail lines, the bulk of the grain goes via rail and northern lake ports to destinations. While not distinctly shown in this record, the Commission understands from other investigations that the rate to and via Chicago and the lakes to the east, say Buffalo, must meet the rate via Duluth and the lakes; and of course the all-rail lines via Chicago, as well as to Chicago, must adjust their rates with reference to those in effect by rail and lake.

We think it no less clear that the proportional all-rail rate of  $7\frac{1}{2}$  cents on flour passing through Chicago from Minneapolis on its way to the seaboard for export, as well as the proportional of 8.3 cents on flour passing through Chicago to the seaboard for domestic consumption, are also the direct results of the competition of lake and rail routes, although this competition is of a different character to that controlling the proportional rate of  $7\frac{1}{2}$  cents on wheat. The latter commodity moving down the lakes to Buffalo, and thence by rail to the seaboard, is carried through the lakes on the so-called "tramp" vessels. The great bulk of the wheat movement to the seaboard goes in that way and on rates so low that the rail lines make practically no effort to meet them. Flour, on the other hand, can be loaded into a vessel only from a wharf, and a tramp vessel, which can lie alongside an elevator and there take on a cargo of wheat, can not carry flour because, generally speaking, it has no access to wharves from which to load it on board. The tramp vessels are therefore unable to compete for the flour traffic and little if any flour moves to the seaboard in that way. The flour that moves by lake and rail is carried ordinarily in the vessels of the so-called "regular" lines, which are largely owned or controlled by the rail carriers leading from the seaboard to Buffalo or to Chicago.

This identity of ownership and control prevents any substantial competition east of Chicago. And the complainants deny that there is any actual competition west of Chicago. They insist that if there were any real competition between the "regular" lake lines and the rail carriers west of Chicago, it would show itself in the rates of the latter lines and would result in a lower rate per ton per mile than we find east of Chicago where there is no competition. But the contrary is the case. The rate per ton per mile is higher west of Chicago than it is east of Chicago. This the complainants contend is a demonstration of their claim that there is no water competition in the flour traffic from Minneapolis to the seaboard.

That view however overlooks the greater density and other conditions of traffic east of Chicago that tend to a lower rate per ton per mile

than is fairly to be expected on the western lines. The great railroads that lead from the Atlantic ports connect at Chicago and St. Louis with numerous lines that spread out over the west in all directions. The heavy current of westbound traffic is thus divided at those points into numerous smaller channels, while the eastbound traffic gathered from as many different sources in the west is condensed at those points into a great volume which ought to and does move to the seaboard on rates that are generally lower than exist west of Chicago. The higher rate per ton per mile west of Chicago is no proof therefore that the proportional flour rates from Minneapolis to Chicago are not controlled by the competition of the lake and rail routes. The record, on the contrary, amply demonstrates the controlling character of such competition.

The lake and rail lines that connect the northwest with the seaboard extend their rail and water routes to the head of the lakes and thus directly compete for traffic that would otherwise come down by rail through Chicago. They offer rates on flour which the rail lines between Minneapolis and Chicago are bound to meet unless they wish to abandon the flour traffic as they have the wheat traffic. That this is the actual situation is shown by the rates themselves. For many years the all-water rate from Duluth to Buffalo has been a differential of  $2\frac{1}{2}$  cents higher than the all-water rate from Chicago to Buffalo. The rail rate on export flour from Minneapolis to Duluth is 5 cents per 100 pounds. In other words, it costs the sum of those two factors, or just  $7\frac{1}{2}$  cents, more to move Minneapolis flour to Buffalo via Duluth and the lakes than it does to lay flour down at Buffalo from Chicago through the lakes. It is clear therefore that if the rail lines west of Chicago wish to haul Minneapolis flour they have only a margin of  $7\frac{1}{2}$  cents per 100 pounds on which to get it to Chicago. And that margin is precisely the amount of the proportional rail rate on export flour from Minneapolis into Chicago. The carriers west of Chicago have simply equalized the rate through Chicago with the rate via Duluth and the lakes to Buffalo. The same conditions have also fixed the rate on flour reaching the seaboard for domestic consumption. The division received by the rail lines from Minneapolis to Duluth on through shipments of domestic flour is 5.8 cents per 100 pounds. If to this be added the  $2\frac{1}{2}$ -cent differential, we get a result of 8.3 cents per 100 pounds, by which amount the rate on domestic flour shipped from Minneapolis through Duluth and the lakes to Buffalo exceeds the rate on domestic flour from Chicago through the lakes to Buffalo. With this margin as a limitation it follows that 8.3 cents must be, as in fact it is, the proportional rail rate to Chicago, or, to speak more accurately, the division which the lines west of Chicago receive, on flour moving from Minneapolis to the seaboard for domestic consumption. Unless it be assumed that the

defendant carriers that reach Minneapolis would voluntarily content themselves with less than a normal rate on flour, the only inference logically to be drawn from this rate situation is that experience has shown that they can not participate in the flour traffic on rates into Chicago that are higher than the margins allowed them by the lake-and-rail rates to Buffalo. The record discloses one effort on their part to raise the rates into Chicago during the winter season of closed navigation. It failed because the millers, rather than pay the higher rail rates, accumulated stocks of flour in the east before the advance became effective and postponed shipments in the spring until the lakes were again opened. They thus avoided the higher rates and compelled the rail carriers to restore the lower basis of rates.

It will not be necessary to analyze the more or less obvious grounds upon which the milling interests of Chicago, Milwaukee, and St. Louis oppose the granting of the relief which the Missouri River millers demand in their petitions. Nor shall we endeavor to follow further the interesting argument of counsel for the complainants. It will suffice to say that we are unable either to accept his view that the great lakes are a negligible quantity in the flour traffic or to concede the soundness of his proposition that water competition is controlling in respect of rail rates only when "the capacity of the water carriers is sufficient to accommodate approximately half of the traffic to be served." The government reports indicate that 6,500,000 barrels of flour were shipped from the northwestern mills by lake and rail during the year 1906; and this record shows that during the year 1907 nearly 3,500,000 barrels moved by lake and rail from the Minneapolis mills as against 14,000,000 barrels that moved from those mills by all-rail routes. These figures indicate a strong movement by lake and rail that might readily grow into much larger volume. Must the rail lines west of Chicago wait until the competition becomes formidable before they can safely adjust their rates to meet it? Must they stand by and permit no reflection of such competition to get into their rates until the water lines have become strong enough to carry "approximately half of the traffic to be served?" We know of no such rule of law, nor does the suggestion appeal to us as logical from any point of view. A railroad can not be permitted to trifle with the interests of the shippers of one locality by setting up an imaginary water competition as an excuse for making lower rates for another locality that ought on other grounds to be on a parity of rates. But where a well-sustained water competition exists that takes a substantial percentage of the tonnage offered, and could readily prepare to take it all, if left in undisturbed control of the traffic, we know of no reason why the rail line may not meet the competition without subjecting itself to charges of discrimination from other quarters. There is no principle of law

that requires it to be content with half the traffic or that forbids it to adjust its rates so as to fight for the whole tonnage the moment it really feels the effect and influence of its competitor's rates.

A careful study of the record and of all other available sources of information has left us with the conviction that the competition of the lake-and-rail routes in the flour traffic from Minneapolis is both substantial and strong; that it has a real and controlling influence on the adjustment of the all-rail rates, and creates such a dissimilarity of circumstances and conditions as to relieve the defendants from the provisions of section 3 of the act. It will not be forgotten also that any order, the result of which would be to require the defendants to raise their Minneapolis rates, would bring no relief to the Missouri River millers, for the lake-and-rail rates to the seaboard would remain unaffected, and their flour would still have to compete with Minneapolis flour on the present basis of rates.

In this connection it may be well to call attention to the fact that the defendants, the Chicago & Alton, the Atchison, Topeka & Santa Fe, the Wabash, and the Missouri Pacific do not operate between Minneapolis and Chicago or participate in the making of rates on Minneapolis flour to the seaboard via Chicago. No charge of discrimination can therefore be predicated of those lines. On the other hand, the Chicago & Northwestern, the Illinois Central, and the Wisconsin Central have not been made parties defendant in these proceedings, although the two former lines participate extensively and the latter at least substantially in the flour traffic from Minneapolis through Chicago to the Atlantic ports. This fact would not justify the carriers that are defendants in continuing an unlawful discrimination against the Missouri River millers by giving unduly low rates to the Minneapolis millers; nevertheless an order such as the complainants demand would be of doubtful efficacy, for it could not run against those three companies, none of which reaches Missouri River points, and all of which would be left free to maintain the present proportionals into Chicago.

The consideration of the question of lake and rail competition in the flour traffic from Minneapolis to the seaboard would not be complete without some reference to lake and rail competition of another kind which seems to us a matter of growing importance, although it was scarcely mentioned on the argument. We refer to the competition of wheat from the northwest with its manufactured product. This general question was considered in *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C. Rep., 398, where the relation of rates from the wheat fields into Minneapolis, Duluth, and Buffalo, as well as the relation of the wheat rates to the rates on flour from those milling points to the seaboard, were explained so fully as to require no further statement of the facts here. From what is there said it is

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clear that any order entered in this proceeding, the tendency of which might be to require the defendant carriers to raise their rates on Minneapolis flour to the seaboard, might easily bring disaster to the great milling industries located there, and would certainly seriously impair their prosperity.

Although the alleged discrimination is the chief ground upon which these complaints are based, it is also contended that the western proportionals are unreasonable in and of themselves; and an effort is made to sustain this contention by a rather unusual analysis of the constituent parts of the through rates. It will be remembered that the proportionals applying from East St. Louis to New York on through movements of flour are 20½ cents on domestic and 16½ cents on export shipments. When the movement is through Chicago the carriers east of the Mississippi River divide those proportionals by first deducting 3 cents for lighterage at the seaboard. Of the balance 28 per cent is assigned to the lines from East St. Louis to Chicago. This gives to those lines a division out of the proportional rates of 4 cents per 100 pounds on domestic shipments and 3.1 cents on export shipments. As the distance between East St. Louis and Chicago is 284 miles, these divisions yield those carriers a rate per ton per mile of 2.82 mills and 2.18 mills, respectively, on domestic and export shipments. This rate per ton per mile if applied to the entire movement from the Missouri River to Chicago, the short-line mileage of which seems to be 488.6 miles over the Chicago & Alton Railroad, would yield earnings to the carriers west of Chicago of 6.9 cents on domestic movements and 5.3 cents on export movements. But the rate expert of the complainants adds 25 per cent to these hypothetical earnings of the lines west of Chicago to cover what counsel for the complainants refers to as the difference "in operating conditions east and west of the Mississippi River." In this manner proportionals of 8.6 cents on domestic and 6.6 cents on export movements are arrived at as the proper and reasonable earnings of the lines west of Chicago, as against the proportionals of 12 cents on domestic and 11.7 cents on export movements which those carriers now actually receive. These hypothetical proportionals west of Chicago added to the 17.5 cents and the 13.8 cents now received by the lines east of Chicago on domestic and export shipments, respectively, would make a through rate on domestic flour from the Missouri River to the seaboard of 26.1 cents and on export flour of 20.4 cents, as against the rates of 29.5 cents and 25.5 cents of which complaint is made. Applying the same basis of rates to movements through the upper Mississippi River crossings the rate expert for the complainant showed that the rate per ton per mile for the through movement would be even less than the rate per mile from East St. Louis, and would yield



through rates, including the 25 per cent addition to cover the increased cost of operation west of the Mississippi River, of 24.4 cents on domestic and 20.1 cents on export shipments.

The Commission has had frequent occasion to say that the rate per ton per mile is not the generally accepted basis for making up rates, so far at least as interstate movements are concerned, and we know of no well-informed shipper or student of transportation who is ready to advocate a mileage system in this country. While a division of a through rate long accepted by a carrier may often be pertinent as evidence upon such an inquiry as this, the Commission has also said not infrequently that a division is not, generally speaking, a sound final test of the reasonableness of the through rate itself. And much less are we ready to accept a division of a division, and that is what the analysis made by the complainants of these rates amounts to, as a test of the reasonableness of the through rates of which complaint is made. Divisions of through rates are arranged by contract between the connecting lines participating in such rates. It is a question of bargain and often of barter, and many considerations may enter into such adjustments between the carriers that have no relation to the service rendered the shipper or to the sufficiency of the carriers' earnings on the special commodity to which the rate applies. All this is so well understood as to make it unnecessary to refer to the previous rulings of the Commission on the point or further to explain why that contention by the complainants must be discarded as of no value in this controversy. In connection with this phase of the case the complainants also call attention to the fact that the defendant carriers accept for their haul between the rivers a division of the through rates on flour to New Orleans, Memphis, and Ohio River, and other points affected by water competition, that is less than their proportional of 9 cents on flour hauled over the same rails to the seaboard. But the facts are merely stated, and we do not understand that the complainants predicate any serious argument upon them. They need not therefore be further considered.

Another feature in these rates of which counsel complains is the advance of  $1\frac{1}{2}$  cents per 100 pounds made on July 1, 1907, to which allusion has been made. This advance was made in the proportionals west of Chicago and the Mississippi River and they have not since been disturbed but are in effect at this time. When questioned by the Commission as to the reasons for making the advance, the chief rate expert of the defendants asserted that it was made in order to restore the flour rates to their normal level. The defendants also put in evidence a history of the flour rates on the lines of the principal defendants during the ten years preceding the date of the advance. It is true that at intervals during those years the

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published proportionals were as high as they are now, but a careful examination of the history of the rates from our own records has left us under the impression that, if there be taken into consideration the fact that the published rates during that period were often modified by special tariffs and by special open contracts, it will be found that the average rates during that time were lower than the present proportionals. It has been our understanding, however, that the advance then made in the flour rates was a mere reflection of a similar advance at the same time in the wheat rates. It has also been said that the advance then made in the wheat rates was in anticipation of what it was generally supposed would be the action of the Commission in the so-called Peavey case. But we do not wish to be understood as now expressing any final opinion either as to the propriety of the advance or as to its connection with the advance then made in the wheat rates. The matter is referred to simply as the basis for some observations that should be made as to the relation in the past between the rates on flour and the rates on wheat in this territory.

For many years carriers participating in the transportation of flour to the Atlantic seaboard for export have maintained substantially the same rates on both wheat and flour, and for a long time there has been an effort to maintain this parity in the domestic rates also. With some exceptions, and taking the traffic as a whole, the rates on wheat and flour have been approximately the same. As one witness of wide experience expressed it at the hearing, "the rate on wheat usually becomes automatically the rate on flour." Another witness said that such an adjustment was inevitable; another that it was the established policy of carriers not to make a rate on flour and grain products that was less than the wheat rate; and a grain commission merchant of standing expressed the view that "of necessity wheat should take the same rate as flour."

This policy seems on many grounds to be a sound one as applied to this territory. In common practice a manufactured product usually takes a higher rate than the raw material from which it is made. But if a higher rate be demanded on flour than is collected on wheat, the tendency of the adjustment would be to concentrate the milling interests toward the east. On the other hand, if flour should be given a lower rate than wheat, the tendency would be to concentrate the milling interests as near to the wheat fields as possible, for traffic ordinarily moves not only on the cheapest rates but in the cheapest form. The maintenance of a parity of rates on wheat and flour tends to equalize conditions at all points at which milling enterprises may exist. The importance to millers generally of such an adjustment of rates is fully conceded by counsel for the complainants. He admits that so far as domestic grain and flour are concerned there is much force in

the argument that a parity of rates should be preserved. He contends, however, that the rates on export wheat and export flour could readily be divorced and a lower rate be given to export flour from Missouri River crossings than to export wheat without working a disadvantage to the milling interests east of the Missouri River. He suggests that this could be done by a ruling providing that wheat to be ground by domestic mills for export as flour should take the same rate as export flour itself, but that wheat destined for export as wheat should take a higher rate to the seaboard than the export-flour rate. In making this suggestion, counsel appeals to the Commission to—

recognize as its duty the fostering of a great industry when it can do so by an act that will work detriment to no one except the foreign miller, whose interest the Commission is in no wise bound to protect.

The suggestion, it must be observed, involves the same principle of parity in rates that underlies the present rate adjustment of which counsel complains. The ocean rate on wheat is generally less than the ocean rate on flour because wheat can be loaded in bulk from an elevator and can otherwise be handled more economically by the ocean carriers. The lowering of the rail rate on flour, as counsel suggests, would tend to overcome the lower ocean rate on wheat, and would therefore tend to equalize the basis upon which the two commodities could be laid down in foreign ports. By demanding a higher rate on export wheat than on export flour the rail carriers to the seaboard would enable the American millers to compete in the foreign markets on substantially equal terms with the foreign millers. The suggestion also concedes the propriety of a parity of rates on wheat and flour so far as the millers of this country are concerned, for the proposition is that export flour and wheat intended to be ground into flour and exported in that form should move on equal terms. In other words, counsel proposes to solve the troubles of the American millers by requiring the carriers to raise their rates on wheat moved to the seaboard for export as wheat. It may be that much may be said in favor of the suggestion, but it is one as to which the American wheat growers would doubtless wish to be heard before any order is entered. It is a well-established principle of transportation, as heretofore stated, that the rates on manufactured products ought generally to be higher than the rates on the raw materials from which they are made. The fostering of our flour industry in its competition with foreign millers, by requiring the carriers to the seaboard to maintain a lower rate on flour than on wheat, would not only be in derogation of that principle of rate regulation, but would be a matter of national policy which, as we understand our duties under the law, this Commission would have no authority to adopt as the basis of its action until it had been accepted, in principle at least, by the Congress and had been made a rule of transportation by adequate legislation.

The demand for a reduction in the rates on flour from Missouri River milling points necessarily involves the rights also of the millers at St. Louis and Chicago, who have intervened as defendants. If a reduction be ordered in the Missouri River rates without also reducing the flour rates from these competing milling points east of the river, the latter will of course be at a disadvantage both in the eastern and the foreign markets to the extent of the differential against them. As they are parties to the proceeding and protest against any disturbance of the present rates, the prayer of the complainants must be considered with some regard to their interests. It will be recalled that the increase in the rates now under consideration was in the western proportionals and not in the eastern proportionals; counsel for the complainants expressly disclaimed any attack upon the reasonableness of the proportional rates east of Chicago and east of St. Louis. West of those points there is an absolute parity of rates on wheat and flour, and such a parity, as we are now advised, seems to be essential in this territory in order to afford the western milling interests an equal access to eastern and foreign competitive flour markets. Without committing ourselves to the proposition that the parity has been so long maintained in this territory as now to have the sanctity of a rule of law, it will suffice to say that we are not ready at this time to consider any demand for a reduction in the proportional flour rates west of Chicago and St. Louis.

At the time the amended complaint was filed there was also an absolute parity in the through domestic rates to the seaboard on wheat and flour, and a substantial parity in the through export rates. The through domestic rate on both commodities from the Missouri River was  $29\frac{1}{2}$  cents per 100 pounds; the export rate was  $25\frac{1}{2}$  cents on flour and 25 cents on wheat. While there has been no change, as heretofore explained, in the proportionals west of Chicago, there have been changes east of Chicago, the result of which is that while the present through rate on domestic flour from Missouri River points to the seaboard is 29 cents per 100 pounds, the present through rate on domestic wheat is 28 cents per 100 pounds; the present through rate on flour for export is still  $25\frac{1}{2}$  cents, and the rate on export wheat is still 25 cents per 100 pounds. While the advantage of  $\frac{1}{2}$  cent which wheat has over flour shipped to the seaboard for export may be said not to impair the substantial parity in rates which the western carriers have sought to maintain on the two commodities, the advantage of 1 cent per 100 pounds which wheat has over flour shipped to the seaboard for domestic purposes may be more of a difference in rates than is proper. But these differences in the rates are in the eastern proportionals and the eastern carriers have not been heard. The issue tendered by counsel for the complainants was expressly limited to the western proportionals, and the eastern carriers therefore did not make any record

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in support of the eastern proportionals, or participate to any extent in the hearing. No order can therefore properly be entered at this time with respect to the eastern proportionals. But without expressing any final opinion it may be well to say that we see no reason why the absolute parity of rates west of Chicago and St. Louis should not be extended through to the seaboard.

An order will be entered dismissing the complaint without prejudice.

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No. 1047.  
INDIANAPOLIS FREIGHT BUREAU  
*v.*  
CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-  
WAY COMPANY ET AL.

*Submitted May 1, 1908. Decided February 4, 1909.*

Complaint alleges that class proportional rates to Ohio River crossings, generally applicable on traffic destined to southeastern territory on specific articles mentioned, are eliminated by the publication of higher commodity proportional rates, and asks that these latter be canceled in order that the lower class proportionals may apply; *Held*, That under the circumstances of this case the order prayed for is not warranted.

*Edward E. Gates* and *W. A. Ketcham* for complainant.

*O. E. Butterfield* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

*John G. Williams* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company and Lake Erie & Western Railroad Company.

*George W. Kretzinger* for Cincinnati, Hamilton & Dayton Railway Company and Judson Harmon, receiver thereof, and Chicago, Indianapolis & Louisville Railway Company.

*John E. Hollett* for Commercial Club of the city of Indianapolis.

*C. C. Hanch* for Manufacturers' Association of Indianapolis.

*H. C. Atkins* for Board of Trade of Indianapolis.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complaint is that the class proportionals, applying generally on traffic from Indianapolis to Ohio River crossings, destined to southeastern territory, are eliminated on the specific articles mentioned by the publication of higher commodity proportional rates, and the prayer is in effect that these latter be canceled in order that the lower class proportionals may apply.

The following table shows the proportional rates—Indianapolis to Ohio River crossings—in effect by commodity tariffs and applicable on the articles mentioned when destined to southeastern territory;

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also rates which would apply under the Southern Classification proportional basis had the articles in question not been excepted from that application:

*Rates in cents per 100 pounds.*

Commodity.	Commodity proportional.		Class proportional.	
	C. L.	L. C. L.	C. L.	L. C. L.
	Cents.	Cents.	Cents.	Cents.
Canned goods.....	9½		8½	
Dry goods (any quantity), as specified (cotton fabrics).....		15		11
Flour.....	6	6	5	5
Fruit jars.....	8		8½	
Skylight glass.....	9½		8½	
Window glass.....	9½		8½	
Plate glass.....	19½		17½	
Hides, green, salted, and pelts.....	8		7	
Lard, leaf.....	12½		8	
Meat, fresh.....	12½		11	
Molasses.....		9½		8½
Pickles (mixed C.L.) and table sauce.....	7		7	
Screen doors and windows.....	9½		8½	
Stoves.....	9½	19½	8½	17½
Washing or scouring compounds (not soap powders).....	12½	12½	11	11
Iron and steel articles.....	7½	9½	7	8½

The commodity proportional rate on fruit jars, and on mixed car-loads of pickles and table sauce, in effect at the time of filing petition, was 9½ cents per 100 pounds.

The Southern Classification is ordinarily limited to application on traffic originating at the Ohio River or south thereof, and does not cover traffic originating north of the Ohio River, except in so far as it may be adopted by special tariffs issued by roads operating in so-called Official Classification territory. Thus, the roads operating north of the Ohio River have adopted proportional rates, published in the Southern Classification, on traffic originating at points north of the Ohio River and destined to southeastern territory, but with specific exceptions as to certain articles, including those covered by the complaint in this case, on which commodity proportionals are named identical with the local rates applying under the Official Classification to Ohio River crossings. It is claimed by the carriers that these exceptions were made after full consideration of the peculiar conditions under which each article so excepted is transported and used; that the Southern Classification generally does not fit conditions prevailing throughout Official Classification territory; that the variations between the two classifications is an obstacle in the way of the uniform adoption of the Southern Classification proportionals on all commodities, and that the effect of the application of the lower rates, which would result from the adoption of the Southern Classification, would be to disturb local rates from

points in Central Freight Association territory to Ohio River crossings, such local rates being applied ordinarily as proportionals on through traffic from those points to southeastern territory.

In the view of the Commission an order such as is prayed for in this case is not warranted. The main reason urged in support of complainant's contention is that it is illogical and improper in any case for a commodity rate to exceed the class rate on the same article. It is true that commodity rates are almost invariably lower than class rates, being special rates presumably established on account of peculiar circumstances and conditions, but it can not be said that the partial adoption of a classification for the construction of certain rates in a territory where ordinarily a different classification obtains is improper, and that all commodities must necessarily be included under such general basis. The question to be determined is whether or not the rates themselves—however they may be made and whatever called—are reasonable and just.

We are not convinced that the rates here complained of are unreasonable or unjust. It follows that the complaint must be dismissed.



No. 1045.

## INDIANAPOLIS FREIGHT BUREAU

v.

## CLEVELAND, CINCINNATI, CHICAGO &amp; ST. LOUIS RAILWAY COMPANY ET AL.

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*Submitted May 1, 1908. Decided February 8, 1909.*

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1. Defendants' rule governing the loading of long ladders in Official Classification territory should be modified so as to provide for the shipment of one dozen ladders at actual weight by fixing the minimum at 1,800 pounds.
2. Since the hearing several defendants have issued tariffs allowing stoppage in transit at Indianapolis for fabrication of structural iron and reshipment at the through rate from point of origin to final destination, provided Indianapolis is intermediate, a charge of  $1\frac{1}{2}$  cents per 100 pounds to be made for the incidental service. In view of this development, the complaint as to this feature is dismissed without prejudice.
3. Since filing of complaint herein the feature relating to different ratings on the several parts of dry-kiln outfits has been satisfied by the cancellation of special iron rates in Central Freight Association and Trunk Line territories.

*Edward E. Gates and W. A. Ketcham* for complainant.

*O. E. Butterfield* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Erie & Western Railroad Company; Lake Shore & Michigan Southern Railway Company; Pittsburg & Lake Erie Railroad Company; New York Central & Hudson River Railroad Company; and Boston & Albany Railroad Company.

*John G. Williams* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; Vandalia Railroad Company; and Pennsylvania Railroad Company.

*George W. Kretzinger* for Chicago, Indianapolis & Louisville Railway Company; Cincinnati, Hamilton & Dayton Railway Company; and Judson Harmon, receiver thereof.

*John E. Hollett* for Commercial Club of the city of Indianapolis.

*C. C. Hanch* for Manufacturers' Association of Indianapolis.

*H. C. Atkins* for Board of Trade of Indianapolis.

## REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

Since the filing of complaint that feature relating to the application of different ratings on the several parts of dry-kiln outfits has been satisfied by the cancellation of special iron rates in Central Freight Association and Trunk Line territories, thereby advancing the rating on the parts and on the complete outfits uniformly to fifth class.

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# RULE GOVERNING THE LOADING OF LONG LADDERS.

Rule 7-C of the Official Classification is as follows:

Unless otherwise specified in the classification, articles too long to be loaded in a standard 36-foot box car through the side door thereof shall be charged at actual weight and class rate for each shipment to one consignee; provided that in no case shall the charge for same be less than 4,000 pounds at first class rates. (See note.)

NOTE.—The dimensions of a standard box car (as referred to in this rule and in the Official Classification) are: Length 36 feet, width 8 feet 6 inches, height 8 feet—all inside measurements—cross sections 68 square feet; capacity, 2,448 cubic feet; side-door opening 6 feet in width.

Complainant contends that the application of this rule to less than carload shipments of ladders too long to load into 36-foot box cars through the side doors thereof is unreasonable, and asks a modification of the same so that end doors may be used, charges to be assessed on actual weight.

The Official Classification rule applies between points in Official Classification territory; shipments moving from or to Western and Southern Classification territories are subject to the Western and Southern Classification rules, which permit loading through end doors and the assessment of charges on actual weight in such case.

Under the Official Classification ladders loaded through side doors are charged second class rate on actual weight; long ladders which can be loaded only through end doors, first class, subject to a minimum of 4,000 pounds.

The following tables afford a comparison of the transportation charges on a less-than-carload shipment, 900 pounds, consisting of 6 ladders too long to load into 36-foot box cars through the side doors, under the application of the various classification rules above referred to:

	Classification.	Weight charged for.	Rate.	Amount.
		<i>Pounds.</i>		
Indianapolis to—				
Ohio River crossings (when for Green Line territory)...	Southern.....	900	\$0.22	\$1.98
Cincinnati proper.....	Official.....	4,000	.25	10.00
Jeffersonville.....				
To Guthrie, Ky.:				
From Chicago.....	Southern.....	900	.94	8.45
From Indianapolis to Louisville.....	Official.....	4,000	.26	10.40
South of Louisville.....	L. & N. local	900	.53	4.77
				15.17
To Jackson, Miss.:				
From Chicago.....	Southern.....	900	1.18	10.62
From Indianapolis to Jeffersonville.....	Official.....	4,000	.25	10.00
South of Jeffersonville.....	Southern.....	900	.98	8.82
				18.82
To Jackson, Tenn.:				
From Chicago.....	do.....	900	1.03	9.27
From Indianapolis to Jeffersonville.....	Official.....	4,000	.25	10.00
South of Jeffersonville.....	Southern.....	900	.86	7.74
				17.74
Indianapolis to Chicago on traffic destined to transcon-	Western.....	900	.72	6.46
tinental territory.				
Indianapolis to Chicago proper.....	Official.....	4,000	.31½	12.60
Indianapolis to East St. Louis on traffic destined to trans-	Western.....	900	.93	8.37
continental territory.				
Indianapolis to East St. Louis proper.....	Official.....	4,000	.38	14.80

*Charges under Official Classification rule as compared to charges on actual weight at second class, 6 ladders, weighing 900 pounds.*

To—	Pounds.	Rate per 100 pounds.	First class, 4,000 pounds minimum.	Second class rate on actual weight
		<i>Cents.</i>		
East St Louis, Ill. ....	4,000	38	\$14.80	\$2.88
Cincinnati, Ohio. ....	4,000	25	10.00	1.98
Columbus, Ohio. ....	4,000	32	12.80	2.52
Cleveland, Ohio. ....	4,000	40	16.00	3.06
Pittsburg, Pa. ....	4,000	44	17.60	3.37
Buffalo, N. Y. ....	4,000	44	17.60	3.37
New York, N. Y. ....	4,000	69½	27.80	5.44

It will be noted under the application of the existing rules, if two less-than-carload shipments of ladders are placed in the same car, one destined to Chicago and the other to the Pacific coast via Chicago, charges on the shipment to Chicago proper will amount to \$12.60, and on the other shipment the proportion of the through charge covering the haul up to Chicago will be \$6.48.

The rule is not confined in its application to ladders, but applies on all articles too long to be loaded through the side doors of cars. Formerly there were not many long articles shipped and it was the practice to fasten the same on top or outside of the cars when it was impracticable to load them inside. This was found to be a dangerous practice and the roads in consequence commenced to load them through the end doors. This resulted in discrimination between shippers, one of whom might be able to secure a car with end doors, while another would not be able to do so, and there was general delay because of the nonavailability of end-door cars when shipments were offered. There was also in the same way discrimination as between different towns, at one of which end-door cars might be available and not at the other.

The handling of property loaded through end doors also involved increased cost to the railroads. Thus, if a car was placed in the warehouse where shipments were being loaded and it was desired to load a long article in through the end door, this might necessitate switching the car entirely out of the warehouse for that purpose since it is impossible to load cars in this manner when coupled together.

Ordinarily long ladders, molding, etc., are shipped in open cars. However, these shipments can not be invariably so loaded since open cars do not travel generally over the lines like box cars, and the carriers might be compelled to send them with part car lots where they are not needed and bring them back empty, and to this fact is due the adoption of the minimum of 4,000 pounds. These shipments could be loaded in 40-foot cars, but such cars are comparatively scarce.

Complainant contends that long ladders of the kind here in question can not be shipped from Indianapolis to Central Freight Association or Trunk Line territories, since freight charges under the Official Classification rule amount to more than the value of the ladders.

Some two years ago, prior to the passage of the amended act to regulate commerce, when the roads were not rigidly adhering to the rule, ladders over 20 feet in length were loaded through end doors, charges thereon being assessed at actual weight, and counsel for complainant maintains that "the roads by disregarding the rule conceded that it was an unreasonable rule to enforce against ladders."

However, the mere fact that there has been a series of unlawful departures from a rule does not necessarily prove the rule unreasonable, nor does the granting of a rebate raise a presumption that the lawfully established rate is unreasonable by the amount of the concession. Should such a presumption arise in every case of this sort, changes in many rules and reduction of numerous rates would necessarily follow.

Irrespective of any such presumption, however, it is the opinion of the Commission that the present rule as applied from Indianapolis to shipments of long ladders is unreasonable and unjust. The evident purpose and tendency of this rule is to altogether prohibit the shipment of ladders which are too long to load through the side doors of standard 36-foot cars, and apparently it has had that effect. The act to regulate commerce contemplates transportation charges which shall be reasonable to the end that there may be a free movement of traffic and to promote commercial intercourse. There is no warrant in the law for the maintenance of a rate or rule for the purpose of restricting the movement of a certain class of traffic because it is unattractive to carriers. Long ladders are shipped in small less-than-carload lots and a minimum of 4,000 pounds does not meet the requirements of that traffic. The minimum should be fixed to provide for the shipment of one dozen ladders at actual weight. This, we understand, would be accomplished by fixing the minimum at 1,800 pounds.

This feature of the complaint relates solely to the application of the rule in question to the shipment of ladders from Indianapolis; the investigation was confined to that question and the order can not extend beyond the scope of the petition and the inquiry predicated thereon.

#### STOPPAGE IN TRANSIT—STRUCTURAL IRON AND STEEL.

The petition alleges unjust discrimination against Indianapolis in that said point is not accorded a stoppage-in-transit privilege on shipments of structural iron and steel in carload lots originating at Buffalo, N. Y., Pittsburg, and Johnstown, Pa., en route to points

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west of Indianapolis, the purpose of such privilege being to permit punching and riveting at the point where the stoppage is allowed under the application of the through rate from point of origin to final destination, with an additional charge of \$3 per car therefor.

The process of riveting and punching iron and steel does not alter the form of the original shipment. The material shipped in is sawed to lengths, riveted, punched, trimmed, and put into more compact form, but the identical material is shipped out.

Chicago and St. Louis are the principal competitors of Indianapolis in the iron and steel trade. The first-mentioned two, being rate-breaking points, are enabled to ship in structural iron and steel from Pittsburg, stop off for such length of time as may be necessary for fabrication, and ship to points in Western territory at the lowest obtainable rate between the Pittsburg-Buffalo district and ultimate destination.

The through rate from the Pittsburg-Buffalo district to St. Louis is 22½ cents; to Chicago 18 cents; and to Indianapolis 17 cents. The rate from Indianapolis to St. Louis is 13½, and to Chicago 11½, making the total combination rate via Indianapolis from Pittsburg-Buffalo to St. Louis 30½ cents, and to Chicago 28½.

The charges on shipments moving via St. Louis, Chicago, and Indianapolis, respectively, are shown as follows:

From Pittsburg-Buffalo to—	Weight.	Rate.	Amount.
	<i>Pounds.</i>	<i>Cents.</i>	
St. Louis.....	40,000	22½	\$90.00
Chicago.....	40,000	18	72.00
Indianapolis.....	40,000	17	68.00
Indianapolis to St. Louis.....	40,000	13½	54.00
			122.00
Indianapolis.....	40,000	17	68.00
Indianapolis to Chicago.....	40,000	11½	46.00
			114.00

With the privilege of stoppage in transit, Indianapolis shippers would pay on basis of through rates as follows:

From Pittsburg-Buffalo to—	Amount.
St. Louis, on 40,000 pounds, at 22½ cents.....	\$90.00
Adding charge for stop.....	3.00
	93.00
Chicago, on 40,000 pounds, at 18 cents.....	72.00
Adding charge for stop.....	3.00
	75.00

The combination via Indianapolis on steel from Pittsburg to Missouri River points is 7½ cents per 100 pounds in excess of the rate as constructed via Chicago. The rate from Pittsburg-Buffalo

via Chicago to St. Paul and Minneapolis and points in Minnesota and Wisconsin taking same rates is  $30\frac{1}{2}$  cents. Similar shipments moving via St. Louis, there fabricated and reshipped to St. Paul, take a rate of 36 cents, and via Indianapolis, 41 cents.

During a period of several years prior to 1901, the railroads accorded the stoppage-in-transit privilege at Indianapolis on steel shipments from Pittsburg destined to western points.

The privilege of stoppage in transit at the through rate is not the only method by which competing intermediate points may be equalized, and complainant in this connection points to the adjustment of rates via Des Moines, Iowa, which is accorded commodity rates aggregating the same as Chicago and St. Louis from the Pittsburg-Buffalo district to Missouri River points. To secure the stoppage-in-transit privilege at the through rate of 45 cents per 100 pounds (which is the same as the Chicago and St. Louis combinations), Des Moines is constituted a rate-breaking point on shipments of steel to Missouri River points.

It may be noted that in no instance does the same carrier serve both Des Moines and Indianapolis.

Since the hearing was had in this case several of the defendant carriers have issued tariffs to the effect that carload shipments of structural iron may be stopped in transit at Indianapolis for fabrication and reshipped at the through rate from point of origin to final destination, provided Indianapolis is intermediate, a charge of  $1\frac{1}{2}$  cents per 100 pounds to be made for the incidental service. In view of this development, the Commission will not consider the making of an order other than one dismissing this feature of the complaint without prejudice.

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No. 879.

CITY OF SPOKANE, WASH., ET AL.,

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

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*Submitted October 1, 1907. Decided February 9, 1909.*

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1. The system of transcontinental rates now in force applies lower transportation charges from points of origin upon the Missouri River and east to Pacific coast cities than are applied to intermediate interior points; *Held*, That this scheme of rate making has been forced by water competition between the Atlantic and the Pacific coasts, and that the maintenance of the lower rate to the more distant coast point is not of necessity a violation of the third or the fourth sections, since water competition creates a dissimilarity of circumstance and condition between the interior and the coast.
2. Water competition may justify a difference in carload minimums and in the right of combining different commodities at the carload rate, as well as in the rate itself; but carriers should be prepared to justify such preference.
3. In determining what are reasonable rates between two points neither that railroad which can afford to handle traffic at the lowest rate nor that whose necessities might justify the highest rate should be exclusively considered. Rates must be established with reference to the whole situation.
4. Certificates issued against the ore lands formerly owned by the Great Northern Railway Company can not be properly considered in determining what are reasonable earnings for that company at the present day.
5. The Great Northern Railway Company has in the past distributed its stock issues among its stockholders at par from time to time, although the market value of the stock was often much above par. Without expressing any opinion upon the legality or propriety of this practice, it is held that this fact, at this time, can have no bearing upon the earnings to which that company is entitled.
6. Neither can the capital stock of the Great Northern Railway Company be reduced for the purpose of determining what its fair earnings should be by the amount of that stock which was originally issued without money consideration.
7. In determining what will be reasonable rates for the future the Commission may properly consider that under the rates in effect a large surplus has been accumulated in the past, but it should not make rates for the purpose of distributing that surplus to the public.
8. The importance of the question whether a railway shall be allowed to earn a return upon the unearned increment represented in the value of its right of way is illustrated by the facts in this case, but is not discussed or decided.
9. Upon an examination of the history of these properties, the cost of reproducing them at the present time, the original cost of construction, the present capitalization, and the manner in which that capitalization has been made; *Held*, That the earnings of both the Great Northern and the Northern Pacific in recent years have been excessive.

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10. The only duty of the Commission in this case is to establish reasonable rates from eastern points of origin to Spokane, and in so doing it can only act upon those rates specifically\*called to its attention, although it must have in mind the effect upon the revenues of these companies of resulting reductions upon other commodities and at other points than Spokane.
11. The rates attacked are class rates from St. Paul and Chicago to Spokane, and commodity rates upon 34 enumerated articles. Class rates are established from St. Paul to Spokane which are 16½ per cent less than those now in effect, and class rates from Chicago to Spokane are made higher than those from St. Paul by certain named arbitraries.
12. In case of all commodities except 5 the present rate from Chicago to Seattle is established as a reasonable local rate from St. Paul to Spokane. Upon 5 articles somewhat higher rates are fixed. Rates on all these commodities from Chicago to Spokane are made 16½ per cent above those from St. Paul. Neither class nor commodity rates are named from points east of Chicago.

*Brooks Adams, Alex. M. Winston, H. M. Stephens, Lawrence Hamblen, Frank Allen, R. M. Barnhart, and J. M. Geraghty* for complainants.

*Charles Donnelly, Edward J. Cannon, and Charles W. Bunn* for Northern Pacific Railway Company.

*L. C. Gilman and W. R. Begg* for Great Northern Railway Company.

*W. W. Cotton, P. F. Dunne, and John N. Baldwin* for Union Pacific Railroad Company, Oregon Railroad & Navigation Company, and Oregon Short Line Railroad Company.

*Seth Mann and Joseph N. Teal* for Pacific Coast Jobbers' & Manufacturers' Association, and Portland Chamber of Commerce, interveners.

#### REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

The complainants in this proceeding are the city of Spokane, Wash., the Spokane Chamber of Commerce, and the Spokane Jobbers' Association, of Spokane. Before the hearings began the county of Spokane was permitted to intervene as a complainant. All interests of that locality are therefore represented.

One of the allegations in the complaint is that the rates of the defendants unduly prefer Seattle, Tacoma, Portland, and other coast points. This allegation affects the commercial interests of those localities, and, with a view to protecting such interests, the Pacific Coast Jobbers' and Manufacturers' Association, the Portland Chamber of Commerce, the Merchants' Protective Association of Seattle, and the Tacoma Traffic Association have become parties of record by petitions of intervention.

The complaint was originally brought against the Northern Pacific Railway Company, the Great Northern Railway Company,

**NOTE.**—The rates and rate references in this opinion were made and verified as of January 1, 1908. Unless otherwise stated subsequent changes have not been noted.

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the Union Pacific Railroad Company, the Oregon Railroad & Navigation Company, and the Spokane Falls & Northern Railway Company. The first four of these defendants form through lines of railway between the Missouri River and Spokane. The last named extends north from Spokane to Nelson, where it connects with the Canadian Pacific Railway, thus affording a possible route from Spokane to eastern destinations.

The complaint puts in issue not only rates from the Missouri River to Spokane, but also those from territory east of that basing line extending as far as the Atlantic seaboard. It seemed to the Commission upon an examination of the complaint that carriers participating in these rates east of the Missouri River ought to be made parties of record as well as the Canadian Pacific, which may handle traffic in connection with the Spokane Falls & Northern from Spokane. We accordingly directed that the Canadian Pacific Railway Company, the Chicago, Burlington & Quincy Railway Company, the Chicago & Northwestern Railway Company, the Lake Shore & Michigan Southern Railway Company, the New York Central & Hudson River Railroad Company, the Pittsburg, Fort Wayne & Chicago Railway Company, the Pennsylvania Railroad Company, the New York, New Haven & Hartford Railroad Company, and the Boston & Maine Railroad be made parties to this proceeding, and they were accordingly brought in as additional defendants and have answered.

The issues presented are important both from the traffic, the pecuniary and the economic questions involved. A large amount of testimony has been taken and the case has been elaborately and ably argued by counsel representing all phases of the controversy. These issues, while treated upon the hearing and argument in a great variety of form, really reduce themselves to three:

First. Do the rates of the defendants unduly discriminate against Spokane in favor of coast points? This includes the further inquiry whether these rates are in violation of the fourth section.

Second. Do the defendants improperly allow certain privileges to coast traffic which are denied Spokane, like the mixing of carloads, lighter minimums, etc.?

Third. Are the rates applied by the defendants to Spokane inherently unjust and unreasonable?

Spokane is situated some 400 miles east of Seattle, and Missoula, Mont., is upon the line of the Northern Pacific about 250 miles east of Spokane. For the purpose of indicating the scheme of rate-making against which this complaint is directed, these three points are taken as illustrative.

Below are given the class rates, in cents per 100 pounds, from St. Paul, Chicago, and New York, respectively, to Seattle and Spokane, Wash., and Missoula, Mont.

## TO SEATTLE, WASH.

From—	1	2	3	4	5	A	B	C	D	E
St. Paul, Minn.....	300	260	220	190	160	160	125	100	95	85
Chicago, Ill.....	300	260	220	190	165	180	125	100	100	95
New York, N. Y.....	300	260	220	190	165	180	125	100	100	95

## TO SPOKANE, WASH.\*

From—	1	2	3	4	5	A	B	C	D	E
St. Paul, Minn.....	300	260	220	190	150	145	125	100	95	85
Chicago, Ill.....	300	260	220	190	170	170	145	117	100	95

## TO MISSOULA, MONT.\*

From—	1	2	3	4	5	A	B	C	D	E
St. Paul, Minn.....	236	201	165	142	118	118	94	82	59	47
Chicago, Ill.....	266	251	205	167	128	143	114	100	73	60

	1	2	3	4	5	6
New York to Chicago .....	75	65	50	35	30	25

\* Rates from New York to Spokane and Missoula are made on combination over Chicago.

From an examination of the above tables it will be seen that class rates from St. Paul to Seattle and Spokane are the same and that they are less to Missoula. From Chicago the class rates are higher to Spokane than to Seattle in all cases, but somewhat lower to Missoula than to either Spokane or Seattle. There are no joint through rates from Chicago to Missoula, the above rates being arrived at by combination upon St. Paul.

From New York class rates are still the same to Seattle as from Chicago and St. Paul, but are materially higher both to Spokane and Missoula. No joint through class rates are published from New York, the through rate above given to Spokane being obtained by combination on Chicago, while the rate to Missoula is made by combining the rates from New York to Chicago, from Chicago to St. Paul, and from St. Paul to Missoula.

It will be seen, therefore, that if all traffic moved upon class rates no discrimination would exist against Spokane when the traffic originated at the Missouri River, save that the defendants would charge the same for transporting traffic 1,829 miles to Seattle as for the 1,490 miles to Spokane. If, however, the traffic originated east of the Missouri River, it would in all cases pay a somewhat higher

rate to Spokane than to Seattle, the difference against Spokane increasing with the distance from St. Paul.

Only a comparatively small part of Spokane's traffic, however, moves upon the class rate. The great bulk of the tonnage from eastern points of origin to Spokane moves upon commodity rates, and this is even more true of the Pacific coast. Hence it is necessary in order to appreciate the force of this discrimination to examine these commodity tariffs.

The complainants have referred in the complaint to a number of commodities as illustrative of the general situation, and we have selected from these ten articles giving below the rates from St. Paul, Chicago, and New York to Seattle, Spokane, and Missoula. The first column in the table indicates whether the rate applied is class or commodity; the second column gives the rate for less-than-carload movements, while the last two columns repeat this information for carload shipments. In some cases, especially from New York to Spokane and Missoula, the rate is made by combination upon Chicago, involving sometimes both class and commodity rates. This is indicated in the tables by the abbreviation "comb."

*Rates in cents per 100 pounds.*

		To Seattle, Wash.			
	Class.	L. C. L.	Class.	C. L.	
<i>From St. Paul, Minn.</i>					
Tin boxes and lard pails, nested in boxes.....	Second	260	Comb.		85
Shovels, spades, and scoops.....	Comb.	165	do		115
Fruit jars and glasses.....	do	150	do		75
Canned corn, peas, and beans.....	do	140	do		85
Drugs and medicines.....	do	180	do		140
Cotton ducks and denims.....	do	135	do		90
Glassware, n. o. s.....	do	160	do		110
Stoves, n. o. s.....	Third	220	do		125
Twine, in bales, boxes, or barrels.....	Comb.	125	do		90
Copper wire.....	do	165	do		110
Wire fencing, in rolls.....	do	150	do		100
<i>From Chicago, Ill.</i>					
Tin boxes and lard pails, nested in boxes.....	Second	260	Comb.		85
Shovels, spades, and scoops.....	Comb.	175	do		125
Fruit jars and glasses.....	do	150	do		85
Canned corn, peas, and beans.....	do	140	do		90
Drugs and medicines.....	do	190	do		140
Cotton ducks and denims.....	do	135	do		90
Glassware, n. o. s.....	do	160	do		110
Stoves, n. o. s.....	Third	220	do		125
Twine, in bales, boxes, or barrels.....	Comb.	125	do		90
Copper wire.....	do	165	do		110
Wire fencing, in rolls.....	do	150	do		100
<i>From New York, N. Y.</i>					
Tin boxes and lard pails, nested in boxes.....	Second	260	Comb.		85
Shovels, scoops, and spades.....	Comb.	175	do		125
Fruit jars and glasses.....	do	150	do		85
Canned corn, peas, and beans.....	do	150	do		90
Drugs and medicines.....	do	190	do		140
Cotton ducks and denims.....	do	135	do		90
Glassware, n. o. s.....	do	160	do		110
Twine, in bales, boxes, or barrels.....	do	125	do		90
Copper wire.....	do	165	do		110
Wire fencing, in rolls.....	do	150	do		100
Stoves, n. o. s. (not crated or boxed).....	Third	220	do		125

Rates in cents per 100 pounds.

	To Spokane, Wash.			
	Class.	L. C. L.	Class.	C. L.
<i>From St. Paul, Minn.</i>				
Tin boxes and lard pails, nested in boxes	Second	260	Fourth	190
Shovels, spades, and scoops	do.	260	Comb.	154
Fruit jars and glasses	Third	220	do.	129
Canned corn, peas, and beans	Fourth	190	do.	126
Drugs and medicines	First	300	do.	190
Cotton ducks and denim	do.	300	do.	176
Glassware, n. o. s.	Second	260	do.	180
Stoves, n. o. s.	Third	220	do.	160
Twine, in bales, boxes, or barrels	Second	260	do.	162
Copper wire	do.	260	do.	158
Wire fencing, in rolls	Third	220	do.	100
<i>From Chicago, Ill.</i>				
Tin boxes and lard pails, nested in boxes	Second	310	Fourth	210
Shovels, spades, and scoops	do.	310	Comb.	164
Fruit jars and glasses	Third	260	do.	130
Canned corn, peas, and beans	Fourth	210	do.	130
Drugs and medicines	First	360	do.	190
Cotton ducks and denim	do.	360	do.	175
Glassware, n. o. s.	Second	310	do.	180
Stoves, n. o. s.	Third	260	do.	165
Twine, in bales, boxes, or barrels	Second	310	do.	162
Copper wire	do.	310	do.	158
Wire fencing, in rolls	Third	260	do.	100
<i>From New York, N. Y.</i>				
Tin boxes and lard pails, nested in boxes	Comb.	365	Comb.	245
Shovels, scoops, and spades	do.	365	do.	185
Fruit jars and glasses	do.	315	do.	130
Canned corn, peas, and beans	do.	269	do.	143
Drugs and medicines	do.	435	do.	190
Cotton ducks and denim	do.	415	do.	175
Glassware, n. o. s.	do.	365	do.	188
Twine, in bales, boxes, or barrels	do.	369	do.	162
Copper wire	do.	360	do.	158
Wire fencing, in rolls	do.	300	do.	100
Stoves, n. o. s. (not crated or boxed)	do.	310	do.	179

	To Missoula, Mont.			
	Class.	L. C. L.	Class.	C. L.
<i>From St. Paul, Minn.</i>				
Tin boxes and lard pails, nested in boxes	Second	201	Fourth	143
Shovels, spades, and scoops	do.	201	Comb.	148
Fruit jars and glasses	Third	166	do.	135
Canned corn, peas, and beans	Fourth	142	do.	125
Drugs and medicines	First	236	do.	180
Cotton ducks and denim	do.	236	First	236
Glassware, n. o. s.	Second	201	Fourth	143
Stoves, n. o. s.	Third	166	Comb.	147
Twine, in bales, boxes, or barrels	Second	201	Fourth	143
Copper wire	do.	201	do.	143
Wire fencing, in rolls	Third	165	Comb.	100
<i>From Chicago, Ill.</i>				
Tin boxes and lard pails, nested in boxes	Second	251	Fourth	167
Shovels, spades, and scoops	do.	251	Comb.	164
Fruit jars and glasses	Third	206	do.	135
Canned corn, peas, and beans	Fourth	167	do.	130
Drugs and medicines	First	266	do.	190
Cotton ducks and denim	Comb.	276	do.	276
Glassware, n. o. s.	Second	251	Fourth	167
Stoves, n. o. s.	Third	206	Comb.	163
Twine, in bales, boxes, or barrels	Second	251	Fourth	167
Copper wire	do.	251	do.	167
Wire fencing, in rolls	Third	206	Comb.	110

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*Rates in cents per 100 pounds.*

	To Missoula, Mont.			
	Class.	L. C. L.	Class.	C. L.
<i>From New York, N. Y.</i>				
Tin boxes and lard pails, nested in boxes.....	Comb.....	316	Comb.....	202
Shovels, scoops, and spades.....	do.....	291	do.....	194
Fruit jars and glasses.....	do.....	290	do.....	185
Canned corn, peas, and beans.....	do.....	207	do.....	160
Drugs and medicines.....	do.....	371	do.....	240
Cotton ducks and denims.....	do.....	331	do.....	331
Glassware, n. o. s.....	do.....	306	do.....	202
Twine, in bales, boxes, or barrels.....	do.....	301	do.....	202
Copper wire.....	do.....	301	do.....	202
Wire fencing, in rolls.....	do.....	245	do.....	149
Stoves, n. o. s. (not crated or boxed).....	do.....	255	do.....	192

From an inspection of these last tables in comparison with the class rates previously given it will be seen:

When the article moves under a commodity rate to both Seattle and Spokane the rate is usually higher to Spokane than to Seattle. Take the second item "shovels, spades, and scoops." This takes a commodity rate to Seattle in both carloads and less than carloads; the second class rate to Spokane in less than carloads and a commodity rate in carloads. The carload rate to Seattle is \$1.15 per 100 pounds, while that to Spokane is \$1.54 per 100 pounds.

The complainant states in its complaint that these commodity rates to Spokane are made by adding to the Seattle rate the full local rate from Seattle to Spokane. This is not correct. In some instances the Spokane rate is constructed in that manner, and it was said in testimony that these items embrace 14 per cent of the whole in number. In other instances the Spokane commodity rate is the same as the Seattle rate, and the testimony shows that this is true of about 16 per cent of the different items in number. With the great bulk of commodities the Spokane rate exceeds materially the Seattle rate, but not by the full local back. It was said that the Spokane rate was higher than that to Seattle by about 70 per cent of the local from Seattle to Spokane in the majority of cases.

It often happens, moreover, that an article may move on the commodity rate to Seattle while it takes the class rate to Spokane; thus the first item, "tin boxes and lard pails, nested," moves in less than carloads to both Seattle and Spokane under the second class rate, which is the same in each case, \$2.60 per 100 pounds; but if this commodity is shipped in carloads, as it usually is, the rate to Seattle is a commodity rate of 85 cents, while that to Spokane is a fourth class rate of \$1.90. This is perhaps the most grievous source of discrimination against Spokane. The Transcontinental Tariff now in force carries 1,560 westbound commodity rates, many of these rates

being applicable to more than one article, while the number of such rates from St. Paul to Spokane is only 636.

It has also been noted that class rates to Seattle apply as blanket rates for the most part to all territory east of the Missouri River, and the same is generally true of westbound commodity rates. Now even those commodity rates which apply from St. Paul do not in all cases extend to territory east of St. Paul. Of the 636 already referred to only 407 apply east of Chicago, and of this number by no means all extend to New York.

It will be seen, therefore, that Spokane rests, owing to the structure of its tariffs, under two disabilities. It must, in the first place, pay a higher rate upon practically everything which reaches that locality from the Missouri River or east, and it is restricted, in the second place, in the markets in which it can buy, for while Seattle and other coast cities can purchase in all territory east of the Missouri River upon even terms, this is by no means true of Spokane.

Traffic over the Union Pacific lines for Portland does not touch Spokane, but all freight transported by the Northern Pacific and Great Northern companies to the coast of necessity passes through Spokane, so that with respect to all the coast business of these two defendants the complainant city is strictly an intermediate point. The distance from Spokane to Seattle by the Great Northern is 339 miles, to Tacoma by the Northern Pacific 396 miles, and to Portland 541 miles. The first claim of the complainants is that these defendants in thus charging lower rates to the coast points violate the fourth section by making a higher charge at the intermediate point, and the third section by unduly discriminating against Spokane, a nearer point.

The defendants do not deny the fact of the discrimination, but insist that this scheme of rates is justified by water competition. Traffic may move from the Atlantic seaboard to these Pacific coast points by water. The defendants say that the water rates are much lower than a reasonable all-rail rate from the Atlantic seaboard to these same Pacific coast destinations; that these water rates absolutely limit the rail rates which can be charged; that this creates a dissimilarity of circumstance and condition which withdraws the case from the prohibition of the fourth section, and that in view of these conditions the discrimination is not undue, and therefore not unlawful under the third section.

This Commission has several times examined this claim of the defendants with respect to other intermediate points, has found that water competition did exist as now asserted by the defendants, and has held that this competition did in the main justify the system of transcontinental tariffs which these defendants have established.

*Kindel v. Atchison, Topeka & Santa Fe Ry. Co.*, 8 I. C. C. Rep., 608; *Shippers Union of Phoenix v. Atchison, Topeka & Santa Fe Ry. Co.*, 9 ib., 250; *Business Men's League of St. Louis v. Atchison, Topeka & Santa Fe Ry. Co.*, 9 ib., 318. It also reached substantially the same conclusion with respect to the city of Spokane in a former proceeding. *Merchants Union of Spokane v. Northern Pacific Ry. Co.*, et al., 5 I. C. C. Rep., 478.

It might be sufficient to adopt without discussion the conclusions reached in those investigations, but inasmuch as the whole question was gone into anew upon this hearing, and since this matter of water competition between the coasts is one of an ever-varying nature, and especially since there can be no adequate understanding of the difficulties which beset the making of these transcontinental rates without a thorough appreciation of this competition, it seems proper to briefly state those conditions here.

For many years before the construction of any transcontinental line of railway the only practicable means of transporting freight in considerable quantities from the Atlantic to the Pacific coast was by water, and after the railway became available this same method of transportation continued to be used. In the early days of the development of the Pacific coast passengers and freight were taken by water to Colon, carried by stage across the Isthmus of Panama, and again shipped by water to San Francisco or other points upon the coast. Subsequently the Panama Railroad took the place of the stage line, and this route is to-day in active operation. It is well understood that for the purpose of preventing competition by this line the transcontinental railroads for several years purchased a sufficient amount of the entire space available by the steamships plying in connection with the Panama Railroad to control the rates. To-day this line maintains rates somewhat below the all-rail rates and handles approximately 40,000 tons of traffic annually.

A certain amount of traffic is carried each year between the coasts by what are termed tramp vessels—that is to say, vessels which do not ply regularly between these points. If, for example, a steamship is constructed upon the Atlantic seaboard and is sent to the Pacific coast for service, it carries out a cargo and is with respect to that voyage a tramp. It was estimated by a witness familiar with these matters that during the year 1906 this tramp tonnage amounted to approximately 25,000 tons.

In the past that route carrying the largest amount of traffic and producing the greatest effect upon transcontinental rates has been the regular service around Cape Horn or through the Straits. Down to the year 1900 the ships employed on this route were entirely sailing vessels, and the service was known as the clipper service. The

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nominal time was about 135 days, but this, owing to the means of propulsion, was often lengthened to 175 or even 200 days. This route always labored under many inherent disabilities. The date of arrival was uncertain; the time consumed was usually long; the cost of insurance was high. Nevertheless it always produced an effect, in fact a controlling effect, upon railway rates from the Atlantic to the Pacific coast.

About the year 1900 the American Hawaiian Steamship Company, which had formerly been interested in these sailing vessels, put into service a line of steamers via the Straits of Magellan in the place of these clipper ships. The time by this new line from New York to San Francisco was 60 days and the date of arrival could be counted upon with great certainty. This reduced the cost of insurance, eliminated the element of uncertainty as to time of arrival, and altogether rendered the route a much more attractive one. It commanded from the first all the traffic its ships could carry. In the year 1906 the tonnage via this route between New York and the Pacific coast was about 115,000 tons.

Beginning early in the year 1907 the American Hawaiian Steamship Company inaugurated a new route, known as the Tehuantepec Route, consisting of a ship carriage from New York to Coatzacoalcas, Mexico, a rail carriage from thence across Mexico, 193 miles via the Tehuantepec National Railroad to Salina Cruz, and thence by vessel to destination.

The time by this route is 25 days from New York to San Francisco, 35 days to Portland, and 40 days to Seattle. When the testimony in this case was taken this route had only just been opened for business, but its traffic manager testified that he expected to carry to the full capacity of his vessels with ease, and that this capacity would be at the outset 250,000 tons per annum.

The ships of this line sail weekly from the port of New York, but the traffic which they carry comes from the whole eastern part of the middle and New England sections of the United States, being transported to New York by rail from the points of origin. The traffic manager testified that at the present time he did not usually reach west of the Buffalo-Pittsburg line for his traffic, but that he had taken starch from Chicago, radiators from Detroit, books and papers from Milwaukee, farm implements from South Bend, and that shipments of various kinds from points west of this line were comparatively frequent. He stated that the rates by his line from New York were from 20 to 60 per cent lower than via the all-rail route to San Francisco, and that substantially the San Francisco rate was applied at Portland, Seattle, and Tacoma. He further said that his line carried all kinds of commodities with the exception of high explosives. At the present time this line does not absorb the rail



rate from the interior point of origin to New York, although in naming the rate from New York account is sometimes taken of the point where the traffic originates. The rates from New York via this line are not published or maintained, but are varied as may be necessary to suit the varying necessities of the business, which means that the steamer makes whatever rate may be necessary to fill its capacity.

Rates are made only to the seaports upon the Pacific coast and the consignee always receives the goods and pays the freight charges at the port. It frequently happens, however, that shippers at interior points in the Pacific States avail themselves of this means of transportation from the east by rebilling at the port to the interior destination at the regular local rate. Shipments have been made in this manner to Spokane itself.

The traffic manager of this line was asked to file a statement which would show in detail with respect to that one of his steamships which was then loading at New York the articles which it carried, giving the character and weight of each consignment, the point of origin and the destination, together with the rate received for the service; and such statement has been filed and is a part of this record. It fully bears out the testimony of the witness. The cargo consisted of a great variety of commodities. More than half the consignments originated at New York, but a considerable portion came from interior points. The prevailing destination was San Francisco, but shipments were also made to Seattle, Portland, Tacoma, and Los Angeles. The rate of freight was in every case materially lower than the published rail schedule from the point of origin. The time involved in transporting this freight from point of origin to destination was materially less than would have been required, in the then congested condition of traffic, for the same service by rail, and was probably as short as could be expected upon the average under normal conditions.

It can not be denied in view of these uncontroverted facts that water competition does exist and that it does produce a controlling effect upon rates to the Pacific coast from many eastern destinations. It is beyond doubt that this competition absolutely limits those rates from New York and points within a few hundred miles of New York to Pacific coast terminals. There is no assignable reason why a shipper should pay from 15 to 50 per cent more money to transport his goods by rail when the water service is equally reliable and almost as expeditious. Up to the present time the transportation facilities by water available have not been sufficient to produce a demoralization in those rates. These water carriers do not yet need to offer the inducement which they might profitably. The rail rate to New York is not absorbed nor are low rates made from New York even. When this business comes to be solicited by the water routes

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in the same way that ocean and rail business is to-day solicited by water lines for southern and western destinations, transcontinental carriers will be confronted with a situation much different from that which they meet to-day; but to-day even they are compelled to fix their terminal rates in view of this competition.

It is not meant that rail carriers might not at the present time maintain temporarily higher rates than are now in effect to Pacific coast terminals. They probably could, certainly on many articles. In 1904 most transcontinental rates were advanced 10 per cent, and that advance was followed by corresponding advances in water rates. But to make these rates materially higher than they now are would not only result in the immediate loss of some traffic but would invite certain competition which in the end must result in material reductions. This water competition not only limits the rates which are now in effect from the Atlantic coast to Portland, Seattle, and Tacoma, but the existence of this competition, especially in view of the approaching completion of the Panama Canal, must be a dominant factor in determining both the present rates and the future policy of these transcontinental lines.

When once the fact of this competition and its effect upon these rates have been found, the decisions of the Supreme Court of the United States foreclose our conclusion. That court has held in numerous cases that if competition exists at the more distant point which controls the rate at that point, the charging of a higher rate at an intermediate point is not necessarily in violation of the third or fourth section. *Interstate Commerce Commission v. Alabama Midland R. R. Co.*, 168 U. S., 173; *Louisville & Nashville R. R. Co., v. Behlmer*, 175 U. S., 648; *Interstate Commerce Commission v. East Tennessee, Virginia & Georgia R. R. Co.*, 181 U. S., 1.

These water rates to Pacific coast terminals apply only from New York. Shipments are made from various other coast points and from various interior points, but in such case the shipper must be to the expense of transporting his goods from the interior to New York City. This means that the rate by water from the interior point in the eastern portion of the United States to San Francisco increases as the distance from New York increases; that is, the rate which these railroads must meet grows progressively higher as the seaboard is receded from. The case further shows that as a practical matter traffic only moves in very small quantities by this water route from farther west than the Buffalo-Pittsburg line. But the rates to Spokane, as we have already seen, are higher than to Portland from all territory east of the Missouri River. Assuming now that under the decisions of the Supreme Court these defendants may properly name a lower rate from New York to Seattle than to Spokane,

or possibly that they may properly do the same thing from Buffalo or from Pittsburg, upon what possible theory can they apply those rates from an interior point from which traffic never moves by water and could not so move owing to the high local rate from the interior point to New York.

Articles consumed upon the Pacific coast are manufactured both in New York and in Chicago, using these points as illustrative merely. If the article is manufactured in New York it may move by water to San Francisco and the rail carrier, in order to obtain a part of this business, must name a rate from New York to San Francisco which is equivalent to the water rate. If the same article is manufactured in Chicago it can not, generally speaking, move by water but must move by rail. In this case the rail haul is 1,000 miles shorter and the cost of service to the railroad company materially less. It is therefore for the interest of the railway that articles consumed upon the Pacific coast should be manufactured in Chicago rather than in New York. The Chicago manufacturer, moreover, demands of the railway a rate which will enable him to sell in competition with the manufacturer in New York.

For this reason railways have applied from all eastern territory the same rate which water competition forces them to make from the Atlantic seaboard and territory immediately contiguous. The Commission has previously examined this phase of the question, has held that carriers need not make a lower rate from the middle west than from the Atlantic seaboard, and has virtually approved the present system of blanket rates. *Business Men's League of St. Louis v. Atchison, Topeka and Santa Fe Ry. Co.*, 9 I. C. C. Rep., 318.

It is suggested that the Commission possesses to-day, under the amended law, a more extensive authority than it formerly had and that for this reason we should declare this discrimination against Spokane in favor of the coast towns to be unlawful. The amendments of June 29, 1906, which conferred these enlarged powers did not in any respect change the third and fourth sections. The interpretation which had been put upon those sections by the court was well known to Congress, and the alleged discriminations and hardships resulting from that interpretation were called forcibly to the attention of the committees having that legislation in charge. That Congress did not, in making the extensive revision of the act which was effected by these amendments, see fit to alter the third and fourth sections in this particular, is highly persuasive that it was the intention of that body to leave the law and its practical working, as applied to the case before us, exactly as it had been.

We are constrained to hold that the defendants do not by the scheme of rates under consideration violate the third and fourth sections.

The complaint also alleges that the defendants grant to the coast terminals more favorable minimums and permit, in certain cases, the mixing of carload shipments to the prejudice of Spokane, in addition to the charging of the higher rate. Very little was said upon this branch of the case in the testimony and it has scarcely been referred to in the argument. It does appear from an examination of the tariffs that in the instance referred to in the complaint a better minimum is accorded upon shipments to the coast than would be available upon similar shipments to Spokane and also that, notably in the handling of various kinds of cotton fabrics, the right to mix carloads is accorded coast shipments and not to shipments to Spokane.

Water competition may justify a difference in minimums or in the privilege of mixing carloads exactly as it justifies a lower rate. This Commission held in *Kindel v. Boston & Albany Railroad Co.*, 11 I. C. C. Rep., 495, that carriers need not accord a carload rate to shipments of cotton piece goods to Denver, although they did apply such rates on shipments to San Francisco. It was also held in the same case that a refusal to allow the mixing of different kinds of cotton fabrics in case of Denver traffic while permitted upon trans-continental business was not in violation of law.

The presumption is that whatever privilege of this sort is accorded one locality should be accorded the other, both being served under the same circumstances by the same carrier. It would fairly be incumbent upon the defendants to show in this case the circumstances which require the more favorable rule at the coast terminal. So little attention has been paid to this matter, however, that we shall undertake to make no order on this branch of the case. If there is any discrimination of the kind against Spokane which does not rest upon a substantial basis and which the defendants are not prepared to justify, they will undoubtedly correct it without further proceedings. If the complainants conceive that discrimination of this kind is unduly continued the better way is to file a new petition and bring this matter specifically to the attention of the Commission.

One other matter which was gone into at some length upon the hearing may be referred to in this connection. The report of the Commission in the original Spokane case, 5 I. C. C. Rep., 478, found that Spokane was discriminated against not only in comparison with the coast towns farther west, but also as compared with Missoula and other towns upon the east. There is some suggestion in the complaint that Missoula still enjoys the benefit of more favorable rates in a few instances.

The original case was decided in the winter of 1892, and soon after the Northern Pacific Railway Company, which was the defendant in that proceeding, attempted to comply in substance with the order

of the Commission which had directed certain changes in rates to Spokane, principally the charging of a lower class rate from St. Paul than was made to the Pacific coast. The advent of the Great Northern Railroad as a transcontinental competitor at about the same time still further complicated the situation, and the result was a period of very unsettled and unsatisfactory transcontinental rate conditions lasting from 1893 down to 1898. The jobbers upon the Pacific coast, notably those of San Francisco, insisted that the rates were too favorable to their competitors in the middle west, and they were aggressive in their insistence upon a readjustment of these tariffs. Finally an understanding was reached between the jobbers of the Pacific coast and the transcontinental lines by which rates were restored, the difference between carloads and less than carloads being materially widened. The adjustment of rates then put into effect was subsequently in the main approved by this Commission in *Business Men's League of St. Louis v. Atchison, Topeka & Santa Fe Ry. Co.*, 9 I. C. C. Rep., 318, and has remained in effect ever since.

By this restoration of rates in 1898 the original discrimination against Spokane was restored, all attempts to comply with the order of the Commission being abandoned and rates reestablished upon the original basis. We have seen that in 1900 the American Hawaiian Steamship Company put into service a line of steamships via the Straits of Magellan, and by the year 1902 this company had extended its operations as far north as Tacoma and Seattle. Traffic had also begun to move to some extent via this line and these Sound ports to Spokane. For the purpose of meeting this competition the defendants put into effect, about 1902, certain additional commodity rates to Spokane, but the general situation was not changed.

Certain rights of way through the city of Spokane were needed by the Great Northern Railway in the course of its construction from the east to the coast, and that company applied to the citizens of Spokane for a donation of the necessary land. The president of that company held several meetings with the citizens and with various committees on this subject, during which he either expressly said or left a very strong impression that if this right of way was granted the Great Northern Railway would apply terminal rates at Spokane. At about the time that railroad was opened for operation to Spokane a certain tariff was printed but apparently never put into effect, which named rates to Spokane not quite as low as those to Seattle, but very much lower than any which were ever actually applied. The alleged failure of Mr. Hill to keep his promises and the inability of Spokane to procure in any way what jobbers conceived to be fair rates, finally led in 1904 to the organization of a boycott by the jobbers of Spokane against the Great Northern and

Northern Pacific lines. These shippers by concerted action diverted their entire shipments to the Union Pacific line, of which the Oregon Railway & Navigation Company is the delivering carrier. The result was a conference between the railways and the jobbing interests of Spokane at which coast jobbers were also represented, the outcome being an understanding that Spokane was to be accorded a certain defined territory.

It was said upon this hearing that this territory was turned over to the Spokane jobbers by reducing the distributing rates from Spokane, which were declared to be very much lower than the corresponding distributing rates from coast towns. Whether those rates are or are not more favorable to Spokane we have not considered, but it seems certain that no change was made in these rates at this time. The purpose was effected by according to Spokane certain carload commodity rates from eastern points of supply. The railways inquired where the various jobbers obtained their supplies and put into effect such rates from those points as would, in comparison with rates to terminal points, enable Spokane to undersell the terminal jobber. Previous to this time the commodity rates accorded to Spokane had been few in number. They were now very much increased. Previous to this they had seldom extended farther east than St. Paul and never beyond Chicago. Now many of them were applied as far as the Buffalo-Pittsburg line and some were extended even to the Atlantic seaboard. The conceded effect was to pass over to the jobber of Spokane a territory about 100 miles in extent to the east and to the south, including the Palouse country upon the north of the Snake River.

While, therefore, Spokane rests under the rate disabilities and discriminations stated in the opening of this report, it enjoys, in so far as it can under that scheme of rate-making, exceptional freight rates. Spokane is probably more favored in this respect than any other interior jobbing point.

The real question which this Commission has, therefore, to consider arises upon the third claim of the complainant, that these rates to Spokane from the east are unjust and unreasonable, under the first section of the act.

Before proceeding to the main question there is one preliminary matter raised both by the pleadings and upon the argument which should be noticed, namely, with reference to what line of railroad is the reasonableness of these rates to be determined?

The Great Northern Railway was the last of these transcontinental lines to be constructed. It was built at a time when the cost of construction was exceedingly low. It seems to have been honestly built. The cost per mile was much less probably than the cost of

either of the other routes. Its location in the matter of grades and curves is favorable, so that the expense of operation by this line is perhaps lower than by either of the other routes. Upon the other hand, the Northern Pacific and the Union Pacific were built at a much earlier date than most of the Great Northern. They involved much of what may be termed experimental outlay. If from the first the best of judgment and the greatest of economy had been employed in constructing and developing those systems, the actual amount of money invested to-day would have been greater than in case of the Great Northern. In fact in the earlier days of both these properties there was waste and poor judgment and dishonesty, so that both the cost of construction and the amount of the original investment are probably much greater than with the Great Northern.

Now the complainants say that it is the business of the Commission to take the least expensive of these routes and to determine these rates upon the basis of the investment in that route. We should allow the Great Northern Company, if that be the least expensive, what will be a fair return upon its property considering the financial history of that company, and no more, even though the rates thus established when applied to the business of its competitors would deprive them of a fair return upon their investment.

The defendants insist that exactly the opposite course should be followed. They urge that a railroad is entitled to a fair return upon its investment, and that this rule applies to all railroads alike. This is the right of the railroad laboring under disadvantages of location and operation, as well as of that one more favorably circumstanced. Hence the Commission must consider that railroad whose net earnings will be least, for if it establishes rates which only yield fair returns to the road most favorably situated, it of necessity knowingly and intentionally deprives every other road of a fair return upon the value of its property.

In support of these propositions counsel for the complainants relies upon the well-known case *Proprietors of Charles River Bridge Company v. Proprietors of Warren Bridge Company*, 11 Pet., 420. In 1785 the legislature of Massachusetts granted a charter for the construction of a toll bridge across the Charles River. The charter provided that the proprietors of the bridge might exact tolls for its use for a certain period, after which it should become free, and this time, according to an amended charter, would expire about 1850.

In 1827 the Massachusetts legislature granted authority for the construction of a second bridge parallel to and in close proximity with the Charles River bridge. This bridge was to be used as a toll bridge for six years, and after the expiration of that time was to be free. It was erected, maintained as a toll bridge for the specified years, and became a free bridge in 1837. This, of course, virtually

confiscated the Charles River bridge, since no one would pay toll when he could go for nothing upon the Warren bridge.

Thereupon, the proprietors of the Charles River Bridge brought suit, claiming that their charter was virtually a contract allowing them to maintain their bridge at a profit, and that the legislature by granting the second charter had taken their property without warrant of law. The court held, however, that the granting of the first charter did not prevent the granting of the second, even though the practical effect of it was to render valueless the property which the plaintiffs had constructed under that charter.

The city of Spokane, argue the complainants, is entitled to the cheapest means of transportation between St. Paul and Spokane. The Government may construct a railway or it may delegate that duty to an agent. If it elects to employ an agent it may require it, and indeed must require it, to establish reasonable rates with respect to its own line, even though this should bankrupt other lines already in existence.

This claim finds some support in *Brunswick & Topsham Water District v. Maine Water Company*, 99 Me., 371, a well-considered case, decided in 1904. That proceeding was for the condemnation by the water district of a portion of the plant of the Maine Water Company, the question being the basis upon which damages should be assessed. The water district claimed that the cost of construction furnished the true measure of damages, but the court held that the defendant was entitled to whatever its property was fairly worth as a going concern furnishing water to the people of that community at reasonable rates. Being inquired of what was meant by a reasonable rate, it answered that the cost to the community of supplying itself by the cheapest means would be a very important element in determining that rate.

These cases show, what indeed must be evident upon general principle, that the charter of a public service corporation does not guarantee to it any return upon its investment. The public may perform the same service or it may charter another corporation for that purpose without reference to the effect upon the revenues of the existing company.

While, however, this is the law, we do not think that the result contended for by the complainant of necessity follows when these principles are applied to the railways of this country. There is a wide difference between a water system which supplies a single community and a railroad which is part of a commercial and industrial whole supplying many communities. The city of Spokane could not develop if served by the Great Northern Railway alone; nor can we look wholly to the interest of Spokane. The whole territory served by these defendant lines must be considered and the



existence of all these railroads to that territory is absolutely essential. These railroads can not exist unless rates are established which will yield a fair return upon their property. We must therefore, in fixing these rates, have regard not altogether to any one particular railroad, but to the whole situation, and must consider the effect of whatever order we make upon all these defendants. Such was the opinion formerly expressed by this Commission in *In re Proposed Advances in Freight Rates*, 9 I. C. C. Rep., 382, and to that opinion we adhere.

It does seem, however, that in this case the Great Northern and the Northern Pacific are the two defendants which should be mainly considered. The rates involved are those from St. Paul. The distance from St. Paul to Spokane over both these lines is much shorter than by the Union Pacific. Spokane is upon the main line of both these roads, while it is upon a branch of the Union Pacific. The business of Spokane is much more an incident in case of the Union Pacific. It is undoubtedly true that the rates from St. Paul to Spokane materially affect other rates of the Union Pacific lines and of other transcontinental lines, and that this probable effect must be considered by us owing to the relation which exists between rates from all eastern destinations to these various Pacific coast points. But still in examining the claim of these complainants that the rates from St. Paul are excessive, we are inclined to think that we should mainly have reference to the two lines which most directly handle this traffic.

What, then, are reasonable rates to be charged over the lines of the defendants to Spokane from various eastern destinations, principally from St. Paul and corresponding territory, having reference mainly to the Northern Pacific and the Great Northern companies?

In that oft-quoted excerpt from *Smyth v. Ames*, 169 U. S., 466, the Supreme Court of the United States said:

We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair valuation of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by the statute, and the sum required to meet operating expenses are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience.

What of the elements above enumerated have we before us in the present case? We have, first, an estimate of the cost of reproducing at the present time both these properties. Second, some information as to the money which has actually gone into their construction.

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Third, the present capitalization. Fourth, their earnings both gross and net for recent years under the present schedule of rates. We have also a statement showing the reduction in revenue which would result from certain changes in these rates to Spokane. We will briefly state the facts upon the first four headings with respect to each of these two defendants, beginning with the Northern Pacific.

#### COST OF REPRODUCTION—NORTHERN PACIFIC.

The Northern Pacific Company with a view to showing the cost of reproducing that property, gave evidence upon the hearing to the following import:

In 1898, after the conclusion of the last receivership and after the present company had entered into the operation of the property, an estimate was made showing the quantities of earth and rock work of various kinds involved in the construction of the system as it then existed. Since that date the embankments have been widened, curvatures have been reduced, and many improvements requiring the movement of earth and rock have been made. The engineer of the company started with this estimate of 1898, which he said had been carefully made and was, in his opinion, reliable, added to this a certain per cent for improvements, and thereby determined the quantities of earth and rock work which would be required to regrade the present road.

A statement was furnished showing the length and character of all tunnels, the length and character of all bridges, the number of culverts, etc. The amount and weight of the rails both in branch lines and in sidings were given, together with the number of ties per mile.

To these items, worked out in elaborate detail, were applied the contract prices then prevailing for the various kinds of work and the prices at which materials of different kinds could then be bought in the open market. Without attempting to examine these details or to restate the computations, it may be said that, speaking always in round numbers, the cost of constructing the roadway of the Northern Pacific Railway as at present existing was estimated by its engineer at \$250,000,000, which included an item of \$20,000,000 for contingencies and of \$23,000,000 for interest. This was stated by the witness to be the cost of reproducing the property at the time he gave his testimony, in March, 1907. He further said that certain items upon the system as they then existed, like buildings, water tanks, etc., were worth less than the cost of new structures of the same kind, and he subtracted an item of \$6,000,000 on account of depreciation, leaving the present value of the roadway, upon the basis of what it would cost to reproduce the same, at \$244,000,000.

He further stated that to purchase the equipment of the company new at that time would have cost \$53,000,000, but that this equip-

ment, owing to depreciation, was only fairly worth \$45,000,000. This would give \$289,000,000 as the fair value of roadway and equipment estimated upon the basis of reproducing it in March, 1907.

To this cost of construction was added an item of \$107,000,000 for right of way and terminal grounds and still another item for coal properties of \$50,000,000, making a grand total of \$446,000,000 as the fair value of the property of the Northern Pacific Railway Company upon which it was entitled to earn a suitable return.

This valuation is by no means a guess. The detailed manner in which it was made has already been given. The prices applied were corroborated by several witnesses of knowledge and standing. The figures were submitted to the engineer of the railroad commission of the state of Washington, who was engaged in making a valuation of the properties of these defendants in that state and who had come to have an accurate acquaintance with the physical characteristics of these railroads in Washington and a considerable knowledge of their history. He declined to express an opinion with respect to the value of the right of way or the coal properties. He estimated at \$220,000,000 the fair value of what was embraced in the \$289,000,000 given by the engineer of the defendant, thus reducing the value of roadway and equipment \$69,000,000. This witness also filed a detailed statement showing the reductions made by him.

We have carefully examined the statements of the defendant and of Mr. Gillette, but it would not be profitable to attempt here any analysis or criticism of them. As usual, the truth undoubtedly lies somewhere between these rather wide limits.

The value of the right of way and terminal grounds was reached by the same detailed process as the cost of construction. The land agent of the Northern Pacific Company furnished a statement showing the quantity of land taken in each state and in case of the larger terminals for each city and gave the value.

He proceeded upon the assumption that a new road was to be located where this road is and the right of way purchased or condemned.

In giving his estimate of the cost of condemning this right of way the land agent separates his estimate into two divisions, styling one "large terminals" and the second "other right of way and station grounds." The so-called large terminals are 13 in number; the amount of land used in these terminal grounds is 4,638 acres, and the estimated value \$75,000,000. The quantity of land used in other right of way is 152,185 acres, the estimated value being \$31,889,587. Subtracting from the large terminals those in which the estimated value is less than \$1,000,000 each, we have left eight cities in which the estimated cost of condemning the land used by the Northern Pacific Company for terminal facilities is \$73,000,000, as against \$34,000,000 for the balance of its right of way.

The complainants attempted to show by cross-examination and by the introduction of some witnesses that this estimate for cost of right of way was grossly excessive, but there is nothing in this record upon which the Commission can intelligently criticise that estimate. It is doubtless somewhat high, but it is by no means certain that upon the basis upon which it was estimated it is extravagantly high. The main item is for terminal facilities in a half dozen cities, and the values in these cases were estimated by independent witnesses, many of whom appeared before the Commission.

It seems altogether probable to us that the money value of this property, not including coal properties, based on the cost of reproduction estimated in the manner above stated, would, in the spring of 1907, have equaled at least \$325,000,000. The operated mileage of this system, as reported in its statistical return to the Commission for the year ending June 30, 1907, was 5,810 miles, and the above valuation would therefore mean a total of about \$56,000 per mile.

This estimate seems to cover slightly more miles than are reported to the Commission, but this would not materially change the result.

In estimating the present money value of its property the Northern Pacific puts upon its coal lands a valuation of \$50,000,000. These properties are certainly of great importance to that company. Eastern coal is used upon its lines east of the Missouri River, which are about 2,300 miles in extent; but for the 3,500 miles west of the river practically the entire supply comes from the Northern Pacific mines.

The location of these mines was given, but need not be stated here. It is sufficient to say that the location is such as to make them almost indispensable to the operation of the railroad. The title to these coal properties is not in the Northern Pacific Company directly, but in the Northwestern Improvement Company, a subsidiary corporation of which the Northern Pacific Railway Company owns the entire bond issue and practically all the stock. The Improvement Company mines this coal and sells it to the railroad company, at so much per ton, in addition to doing a certain amount of commercial business. The cost of producing the coal at the different mines and the price paid by the Northern Pacific were both given, showing a handsome margin of profit to the Improvement Company.

The bonds of the Improvement Company are \$7,000,000 in amount and pay 4 per cent interest; the stock was said to be \$2,775,000. It did not appear upon the hearing what dividends, if any, had been paid upon this stock; nor what the result of the financial operations of the Improvement Company had been, but since the hearing and since the preparation of this report the Improvement Company has paid a dividend of 629 per cent, and the Northern Pacific Company, from the proceeds of this dividend, has distributed to its own stockholders a dividend of \$11.26 per share.

## COST OF ORIGINAL CONSTRUCTION—NORTHERN PACIFIC.

The construction of the Northern Pacific Railway was begun in 1870, and the first receivership occurred in 1875. The present auditor of the company testified that at the end of that receivership the books of the company showed cost of construction up to that time to have been, in round numbers, \$65,000,000, and that the mileage then in operation was 550 miles. Considerable work had been done in surveying and possibly some uncompleted construction may have been under way.

The second receivership began in 1893 and ended in the summer of 1896. The same witness testified that the books of the company were better kept during this period than during the first period. He had, however, made no personal examination and had no personal knowledge of the accounts and could give no idea of the meaning of the figures. He said that for him the Northern Pacific Railway Company began September 1, 1896. The books showed that up to that date \$219,000,000 had been expended upon roadbed and structures and \$22,000,000 upon equipment, making a total of \$241,000,000. The mileage had increased to 4,500 miles, giving an average cost, therefore, of about \$53,575 per mile.

The testimony of this witness really amounts to nothing more than a statement of the figures which appear in the annual reports of the Northern Pacific Railway to this Commission. We have no information as to the manner in which this construction went on, nor as to the means of payment, nor as to the amount of cash which this book outlay represented. It is reasonably certain that the road at that time could not have cost, upon any economical basis of construction, anything like the amount shown by these figures.

They include the \$65,000,000 which had been expended in constructing 550 miles of road under the first administration of the Northern Pacific Company. They include the purchase of many branch lines. The period over which these transactions extended was one in which railway construction represented almost universally, especially in new sections of the country, extravagance and jobbery. The condition of the road then was in no respect as good as to-day. The cost of constructing the Great Northern, which was completed in 1892, and which was probably a better road then than the Northern Pacific in 1896, was stated by its vice-president to have been \$27,000 per mile.

Upon the other hand, the money invested in this enterprise up to September 1, 1896, had not received, in all cases, regular returns, and possibly some of it had received no returns. Rates of interest upon the mortgages were high, but that interest was not in all cases paid.

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The auditor testified that on the average only sixty-four one-hundredths of 1 per cent was paid in the way of dividends upon the capital stock of the Northern Pacific Company between the end of the first receivership and September 1, 1896.

Beginning with September 1, 1896, we have a more intelligent and reliable account of the financial operations of this company, and one which may fairly be said to be satisfactory. Since that date the company has expended something over \$83,000,000, making a total expenditure of \$324,000,000. The mileage has in the meantime increased from 4,500 to 6,097 miles, as stated by the auditor; 5,810 miles as given in the annual report to this Commission. This makes the cost of construction, including equipment, something over \$50,000 per mile.

It will be seen from the above statement that it is utterly impossible to know what amount of money has been actually expended in constructing the Northern Pacific properties up to the present time. Previous to September 1, 1896, the account which we have is entirely unreliable. It is impossible to say either what cash was invested or what return has been paid upon the investment.

#### CAPITALIZATION—NORTHERN PACIFIC.

The so-called "Northern Pacific System" at the time of the last receivership consisted of some thirty independent properties operated under one management. The purpose of the reorganization plan by which that receivership was terminated was to transform this heterogeneous mass into a homogeneous whole, and the effect of it has been to consolidate all these properties into one compact system. Under this reorganization scheme \$130,000,000 of 4 per cent bonds, known as "prior lien" bonds, were secured by a first lien upon the entire property, and \$60,000,000 of 3 per cent bonds, known as "general lien" bonds, were secured by a second mortgage upon the same property. Of these two issues \$25,000,000 of the prior lien bonds and \$4,000,000 of the general lien bonds were reserved in the treasury of the company for the future development of the property. The balance was either issued in payment of various mortgages previously existing against the properties, at prices named in the plan of reorganization, or held by the company as security for the payment of such mortgages when they fell due.

In 1900 a mortgage of \$20,000,000 was placed upon the St. Paul & Duluth division of the Northern Pacific Company, to be used in payment for the St. Paul & Duluth Railroad, which was purchased by the Northern Pacific at about this time. Of these bonds \$8,000,000 are outstanding. Certain of the prior lien bonds have been retired

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so that the total bonded indebtedness of the Northern Pacific at the present time is \$187,000,000, bearing an average rate of interest of something less than 4 per cent and carrying fixed charges of substantially \$7,000,000.

As a part of this same reorganization plan \$75,000,000 of preferred stock and \$80,000,000 of common stock were issued. By the terms of the issue the preferred stock might, at certain intervals during the next twenty years be retired at par. This privilege was subsequently taken advantage of, and for the purpose of securing funds with which to make the payment a corresponding amount of common stock was issued. The only stock of the company to-day is therefore common stock and the total issue is \$155,000,000.

It appears from the record that the old Northern Pacific Company had both a preferred stock and a common stock and counsel for that company states in his brief that the amount of the preferred was \$51,000,000 and of the common \$49,000,000. Of the new stocks \$2,500,000 of preferred and the same amount of common were reserved as a treasury stock and for reorganization purposes. Of the balance a certain amount of preferred seems to have been used in the satisfaction of mortgage liens. The balance was exchangeable upon the following terms: Upon payment of \$10 a share of preferred stock was issued to stockholders having \$50 of old preferred stock and \$50 of old common stock, and a share of new common stock was issued in exchange for a share of old common stock upon payment of \$15 in cash. The new preferred stock seems to have been practically all taken up under the plan of reorganization, but a large number of shares of common stock was not subscribed for by the holders of the old common stock and this was subsequently sold to Mr. James J. Hill and his associates for \$15 per share.

The capitalization of the Northern Pacific Railway at the present time, therefore, is about \$342,000,000, or substantially \$57,800 per mile of line. It was said that the capitalization of the old companies embraced in the present system was approximately \$380,000,000.

The statistical report of the Northern Pacific for the year ended June 30, 1907, shows that this company has voted an additional issue of \$95,000,000 of common stock, none of which was at the time of the filing of that report outstanding. There is nothing in this case to show the necessity for or purpose of this stock issue.

The Northern Pacific and the Great Northern companies own jointly the Burlington system and have each issued their obligations in the sum of \$107,000,000 in payment for that property. We have treated the property as worth the indebtedness and have made no account of this \$107,000,000 of obligations upon the part of the Northern Pacific Company.

## EARNINGS—NORTHERN PACIFIC.

The preferred stock issued in accordance with the plan of reorganization was entitled to a dividend of 4 per cent before anything was paid upon the common stock, and this dividend was regularly paid down to the time when that stock was retired by the issue of an equal amount of common stock. No dividends were paid on the common stock until 1899, when a dividend of 2 per cent was declared. In 1900 this was increased to 3 per cent, in 1901 to 4 per cent, in 1902 to 6 per cent. In 1903 the conversion of preferred into common stock occurred and the dividend of that year was equivalent to about 6½ per cent upon the entire stock issue. Beginning with 1904 7 per cent dividends have been regularly declared.

The first full year in which this property was operated under the new management after the receivership was that ended June 30, 1898. Beginning with that year the company has, in addition to the payment of its fixed charges, interest, and dividends, as above stated, shown each year the following amounts invested in permanent improvements and remaining as surplus. By "surplus" is meant what is left after all expenses have been deducted and the appropriation for permanent improvements made.

Year.	Surplus.	Permanent improvements.
1898.....	\$2,897,874.60	\$811,709.35
1899.....	1,031,282.59	2,176,619.26
1900.....	1,081,818.76	3,000,000.00
1901.....	1,002,618.54	2,011,285.00
1902.....	1,547,286.18	3,000,000.00
1903.....	1,649,130.81	3,000,000.00
1904.....	1,379,321.96	3,000,000.00
1905.....	3,016,931.85	3,000,000.00
1906.....	5,542,519.69	3,000,000.00
1907.....	12,621,929.43	.....
	31,776,714.41	22,999,613.61

In the year 1906 this company, in addition to the permanent improvements and surplus above stated, charged off an item of \$3,081,980.16 as depreciation of equipment. The roadbed and structures of the Northern Pacific have undoubtedly been fully maintained out of operating expenses; indeed, the complainants insist that very extensive betterments to the property have been charged against the cost of operation. It is probable that the equipment of the company has also been maintained as a part of the operating expenses, but it might easily happen that this would not be true, and we have therefore made no account whatever of this item in stating the net results of the financial operations of that company.

## COST OF REPRODUCTION—GREAT NORTHERN.

The Great Northern Railway gave evidence tending to show the cost of reproducing its properties estimated upon the same basis as already explained in case of the Northern Pacific. In some respects



this testimony with respect to the Great Northern is more satisfactory than that furnished by the Northern Pacific. The engineer of this company testified that there were in the offices of the company detailed surveys showing the quantities of earth and rock in case of 82 per cent of the entire system, and that it was possible to make a very close estimate with respect to the remaining 18 per cent. It also has a detailed account of its tunnels, bridges, culverts, weight of rail, number of ties, amount of ballast, etc. To these quantities it applied the market prices prevailing in the spring of 1907, thus working out in detail the cost of reproduction. This aggregates in all \$415,000,000, including \$41,000,000 for equipment and \$87,000,000 for right of way.

The expense of right of way is estimated by this company in the same manner as by the Northern Pacific. The value outside of terminals is \$27,000,000, that of terminals \$60,000,000. The terminals named embrace 17 cities. Seven of these are estimated at less than \$1,000,000 each, and disregarding these we have an estimated value of \$55,000,000 for terminals at 10 points.

The total above given includes \$15,000,000 for contingencies, \$3,500,000 for general and legal expenses, \$37,500,000 for interest. The prices charged are in many instances somewhat too high and the method of computation not strictly accurate. On the whole, however, we are impressed that this estimate has been prepared in good faith and with great care.

It was submitted to Mr. Gillette, of the Washington railroad commission, already referred to, for his criticism and revision. In his opinion the estimate as given should have been reduced some \$80,000,000 in all, leaving a total of \$335,000,000. Here, as in case of the Northern Pacific, it is probable that the truth lies between the extreme of his estimate and that offered by the defendant.

For our present purpose this estimate of the Great Northern is rendered largely useless by reason of the fact that the mileage covered by the estimate seems to be radically different from that covered by the reports of that company to this Commission, upon which our information as to its financial operations are based. The statement of the engineer covers 6,523 miles of main track, while the report of the Great Northern to the Commission only covers 5,335. The cost of reproduction per mile of main track, as stated by the engineer of that company, would be \$62,500. This is probably in the vicinity of \$10,000 per mile too high. Assuming that the cost of reproducing the whole 6,523 miles was \$52,500 per mile, as we have indicated, the cost of reproducing the 5,335 miles, covered by the report of the Great Northern to us, would be not far from \$270,000,000.

These estimates of the cost of reproduction in case of both the Northern Pacific and the Great Northern were made in the spring

of 1907, and it was said in testimony that the cost of reproduction, not including the right of way, at that time would have been from 12 to 15 per cent higher than three or four years before. The cost of constructing these properties when these estimates were made would probably exceed by 50 per cent the cost of constructing them when the Pacific extension of the Great Northern was built.

This investigation conclusively shows that if any importance whatever is to be attached to the cost of reproduction in the establishment of railway rates, the valuation must be undertaken by the Government itself. No individual has the means and no individual if he had the means could afford the expense of procuring even a rough estimate, accurate within reasonable limits, of the cost of rebuilding either of these defendant properties. In the present case we are impressed that the engineers of the defendants have proceeded in good faith, and the complainants were fortunate in being able to submit their estimates to the criticism of a witness unusually well qualified to pass an opinion upon their accuracy; but even so we have little confidence in the reliability of the conclusion reached. There can be no satisfactory knowledge upon this point until public authority makes a detailed valuation upon a uniform basis.

The Great Northern Company owns either all or practically all of the capital stock of certain railroad companies which are operated not by the Great Northern Company as such, but by the subsidiary company itself. The statements of the Great Northern showing cost of reproduction evidently include this mileage, upon the theory that a railroad whose stock was entirely owned by the Great Northern Company was in fact a part of that railway system.

#### COST OF ORIGINAL CONSTRUCTION—GREAT NORTHERN.

There is no evidence in this record from which any satisfactory conclusion can be reached as to the actual amount of cash expended in the construction and development of the Great Northern Railway system. As is well understood, the basis of that system is its leasehold interest in the St. Paul, Minneapolis & Manitoba Railway, of which it took possession in 1890. The Manitoba Company itself was organized in 1879 and began operations in 1880 by acquiring certain other railroads which were in the hands of receivers. The first acquisition by the Manitoba Company represented 565 miles of completed road and a land grant of 2,000,000 acres, and the price paid was about \$7,000,000. It is impossible to follow accurately the development of the Manitoba system from 1880 to 1890.

One of the first acts of that company was to issue to its stockholders \$15,000,000 of stock, for which no money was ever paid.

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Subsequently, \$5,000,000 of stock were distributed among stockholders at par, and this made up the capital stock of the Manitoba Company when it leased its property to the Great Northern.

Very early in its history it issued \$10,000,000 in bonds, which were apportioned among its stockholders at 10 per cent of the face value. These bonds were perfectly good and were saleable upon the market at par.

The first dividend paid upon the capital stock of the Manitoba Company was in August, 1882, and was  $3\frac{1}{2}$  per cent. From that time on dividends continued to be paid at the rate of 6 per cent or more down to the date of the lease. The Great Northern by the terms of its lease guaranteed the interest upon the bonds of the Manitoba Company which were then outstanding or which might be issued in the further construction of that road and also guaranteed a dividend upon its stock. This \$20,000,000 of Manitoba stock was subsequently retired in exchange for \$25,000,000 of Great Northern stock.

The last annual report of the St. Paul, Minneapolis & Manitoba Railway to this Commission before its property was taken over by the Great Northern was for the year ended June 30, 1889. According to that report the company then owned 2,798.89 miles of railway and operated under contract certain additional lines which brought the total up to 3,030.16. Its outstanding capital stock was \$20,000,000 and its outstanding bonds were \$60,985,000, making a total capitalization, in round numbers, of \$29,000 per mile. It reported the total cost of its road and equipment at \$78,522,595.70, or approximately \$28,000 per mile.

It will be remembered that of the \$20,000,000 of stock \$15,000,000 had been a gratuity, and that of the \$60,000,000 of bonds \$10,000,000 had been issued to the stockholders at 10 cents on the dollar.

This company also owned, according to this report, certain stocks and bonds in other railway companies which were really a part of its system, amounting to about \$20,000,000 par value, and the purpose of the organization of the Great Northern seems to have been to "capitalize" a part or the whole of these securities. The first issue of capital stock by the Great Northern Company was for \$20,000,000, for which stockholders paid only 50 cents on the dollar.

Still later the Great Northern issued \$25,000,000 of its capital stock in exchange for the \$20,000,000 of Manitoba stock, upon which, by the terms of its lease, it had guaranteed a 6 per cent dividend. No money was ever paid for either of these issues. The balance of the stock issued from time to time by the Great Northern Company seems to have been paid for at par. The stock of that company was, during the period covered by these issues, very much above par upon

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the market, being at the time of one issue \$264 per share. This new stock was in all cases issued proportionately to holders of Great Northern stock at par.

What was done with this money so realized from the sale of the balance of its stock does not very clearly appear. The Manitoba road provided for the extension of its line to the coast, a distance of something over 800 miles, by issuing a mortgage for \$30,000,000. In the development of its system the Great Northern Company has sometimes built railroads, becoming itself the owner of their capital stock; it has sometimes built railroads by advancing the money and afterwards capitalizing the interest of its stockholders in that property. After spending days in examining the annual reports to this Commission, the annual reports to its stockholders, current accounts in financial journals, it is still impossible to state with any degree of accuracy what money has gone into the properties of the Great Northern System—either the 5,335 miles which it now operates or the 6,523 miles which it controls and which are really a part of its entire property. It would be difficult to devise a scheme better intended to confuse and to conceal than that employed in the development and operation of the Great Northern Railway System.

#### CAPITALIZATION—GREAT NORTHERN.

The outstanding capital stock of the Great Northern Company, according to its last report to this Commission, is \$149,577,300 at par. The Great Northern Company itself has no bonded indebtedness. It is impossible to state exactly the funded indebtedness or the capitalization of the properties which enter into either the mileage operated by the Great Northern or the total mileage in which it is interested. The Eastern Railway of Minnesota embraces 500 miles, with a capital stock of \$16,000,000 and a bond issue of \$9,700,000. The Great Northern guarantees 6 per cent on the stock and the interest on the bonds. The St. Paul, Minneapolis & Manitoba leases to the Great Northern 3,875 miles. It reports an outstanding bond issue of \$94,000,000, including \$12,000,000 of improvement bonds issued to the Great Northern itself and a stock issue of \$20,000,000, which, as we have already seen, has been retired by an issue of Great Northern stock. The remaining mileage operated by the Great Northern filed no reports with this Commission and we have no information as to its capital accounts.

#### EARNINGS—GREAT NORTHERN.

The Great Northern Railway Company is an operating and holding company exclusively, owning no railway itself. As previously  
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stated, it owns a half interest in the Burlington system, which it carries in its accounts as \$107,000,000, and against which it assumes a liability of a like amount. This asset has been treated as offsetting the liability.

It appears from the last annual report of that company to this Commission that the Great Northern had in its treasury stocks which it valued at \$78,000,000 and bonds which it valued at \$22,000,000, making in all \$100,000,000. These stocks and bonds are all interest-paying securities and are of two classes.

It has been already stated that the Great Northern Company issued its own stock in the amount of \$25,000,000 par in exchange for the Manitoba stock amounting to \$20,000,000 at par. This Manitoba stock is now carried as a treasury asset by the Great Northern Company, and in its income account, as stated to this Commission, it is charged with dividends on this stock and credited with the same dividends as rental paid for the Manitoba property. This, of course, produces no effect upon the net result, but does swell the amount of income which the Great Northern derives from other sources than operation.

That company also owns the stocks of certain railroad companies which operate their own properties and pay a dividend to the Great Northern Company. For example, it has \$5,500,000 of the capital stock of the Wilmar & Sioux Falls Railway Company, upon which that company pays a dividend of 7 per cent. This, of course, is distinct from operation, and it should be remembered, therefore, that the financial report of the Great Northern Company, as shown by its returns to the Interstate Commerce Commission, does not merely represent the results from the operation of the 5,335 miles which it operates, but includes as well the income which it derives from its ownership of some 1,200 other miles of railway which are a part of its system, but which are controlled through stock ownership and not by lease. These companies are accumulating a surplus on their own account, and hence the financial statement of the Great Northern does not fairly represent either the operating results from its entire system or from the mileage which it operates itself. With this explanation we give below for the various years since 1890 the surplus, the permanent improvements, and the dividends paid by the Great Northern Railway Company.

By "surplus" is meant what remains after payment of dividends, fixed charges, taxes, and all other expenses, and the deduction of "permanent improvements."

Year.	Surplus.	Perma- nent im- prove- ments.	Divi- dends.
			<i>Per cent.</i>
1891.....	\$388,621		3½
1892.....	943,475		5
1893.....	1,182,330		5
1894.....	a Deficit.		5
1895.....	189,508		5
1896.....	1,042,547		5
1897.....	1,207,267		5
1898.....	2,071,768	\$2,250,000	6
1899.....	1,787,191	1,800,000	6½
1900.....	2,217,763	1,800,000	7
1901.....		1,689,064	7
1902.....	2,116,990	2,000,000	7
1903.....	4,133,970	3,000,000	7
1904.....	3,432,181	2,023,843	7
1905.....	5,137,376	3,000,000	7
1906.....	5,184,569	5,130,910	7
1907.....	2,155,703	4,934,976	7
a Deficit in 1894.....	33,791,268 104,153	27,628,703	
	33,687,115		

The complainants make certain claims with respect to the matters hereinbefore stated touching the value and earnings of these properties and as to the conclusions to be drawn from those facts, which may be considered here.

#### NORTHERN PACIFIC COAL LANDS.

They insist that the coal lands of the Northern Pacific should not be included in the value of that property upon which the company is entitled to earn a return. This position is well taken. Those lands are certainly of the very first importance to that railroad, and it might have been both a wise and a proper thing to make this provision for the future. In that case the public could not well find fault if it were compelled to pay interest upon whatever outlay was reasonably necessary; but if the public is required to pay upon the value of these lands it should also have the benefit which accrues from their ownership. As it is, the title to these properties is vested in an independent company. That company conducts the mining operations and sells coal both to private consumers and to the railway, and it makes from its railway fuel, according to the statement furnished us, a handsome profit. The railway pays as a part of its operating expenses for its coal at this price, so that the public once pays a return upon these properties when the railroad buys its fuel coal at the figure now charged. To permit the value of these properties to be used for the purpose of swelling the amount upon which an income may be demanded by the Northern Pacific Railway Company would be to compel the public to pay twice upon this part of the investment.

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## GREAT NORTHERN ORE CERTIFICATES.

The annual report of the Great Northern Railway Company for the year 1900 contains an item under deductions for the year of \$1,851,364, and the report states that this amount has been charged off by reason of the transfer of certain securities of the company to the Lake Superior Company, Limited. It seems that such a company was organized and did take title to various properties and securities formerly owned by the Great Northern Company. In this manner the Lake Superior Company obtained title to certain lands in the state of Minnesota containing extensive deposits of iron ore. These lands have since been transferred to trustees and a contract for the taking out of the ore has been entered into with the United States Steel Corporation. A certificate was issued to each holder of a share of Great Northern stock entitling the holder of such certificate to a proportionate share in the income received by these trustees from the operation of the ore leases. These ore certificates were worth on the market at one time \$90 each; to-day, February 9, 1909, the market price is about \$71, and they have a prospective value very much greater if the quantity of ore is anything as large as the estimate and the leases are fulfilled according to their terms.

When it is remembered that none of the Great Northern stock was issued for more than par, it will be seen that the holder of a share of this stock could by the sale of his ore certificate have realized nearly enough to reimburse him for the original cost of his stock. A considerable part of the Great Northern stock was issued as a gratuity, or at least represented no cash advance. These ore certificates at \$90 each would considerably more than return to stockholders all the money ever actually advanced to the Great Northern Company in payment for stock. The complainants insist that in determining what returns these stockholders may demand from the public the fact that this stock represents practically no investment of cash must be kept in mind by this Commission.

Without attempting to determine what the rights of the public may have originally been in these ore lands—a question which could not be intelligently determined upon this record—it is difficult to see how, at the present time, any practical application can be made of the idea of the complainants. These certificates are transferable and they are in no way connected with the stock on account of which they were originally issued. The stockholder having received his certificate might sell his stock and retain the certificate or sell the certificate and retain his stock. It is altogether probable that the ownership of stock and certificate in many cases has ceased to be the same. How, then, could we say that the holder of Great Northern

stock who has purchased his stock in the open market, who does not to-day own and never has owned an ore certificate, can be accountable for the value of these ore lands? Certainly this was a most momentous transaction to the holders of this \$150,000,000 of Great Northern stock, for on the basis of past market prices it represented to them from \$75,000,000 to \$135,000,000 in money, but apparently this Commission, in the decision of the questions before it, can take no account of that transaction.

#### DISTRIBUTION OF GREAT NORTHERN STOCK AT PAR.

Of this same character is the contention of the complainant with respect to the manner in which the stock of the Great Northern Company has been issued.

It has been already said that since about 1893 the stock of this company has sold upon the market at above par. It has also appeared that all the stock issues of the company after the first, with the exception of that issue made to retire the Manitoba stock, were distributed pro rata among the holders of the stock of the company at par. The actual market value of the stock at the time of these various issues so distributed ranged from \$140 to \$264 per share. A stockholder could therefore have paid \$100 for his share of stock and at once sold the same upon the market for a much higher price, thus realizing from the transaction from \$40 to \$164 per share. The complainant insists that this manner of selling stock is vicious and unlawful, and that in determining the return to these stockholders we must have in mind the benefit conferred upon those stockholders by this operation.

Assuming, without deciding, that the complainant is right in its position that this practice is both unlawful and unwise, how can we, in this proceeding, take any practical note of what has been done? This stock is selling to-day, January, 1908, upon the market at something less than \$120 per share. If the original stockholder has retained and now owns his stock he paid \$100 in the beginning, has received a regular dividend, and now owns his stock at the above advance. While the profit to him has been a handsome one, there is certainly nothing here which would call for a penalizing of the stockholder. Suppose, now, that instead of retaining the stock the stockholder sold the same to some innocent purchaser who paid the market price and who has continued to own the stock from then until now. This present stockholder paid perhaps \$264 a share for his stock. He has lost \$144 per share. Should we, for that reason, compel him to sustain a further loss?

The manner in which this stock has been manipulated may furnish a strong argument against the propriety of permitting the sale of

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new stock in this manner, but so far as this particular company and the stock already issued are concerned the transaction is ended and can be given no practical consideration in determining what rates shall be charged by the Great Northern Railway Company.

#### WATERED STOCK—GREAT NORTHERN.

Of the \$150,000,000 of the capital stock of the Great Northern Railway Company outstanding, \$30,000,000 has been issued without the payment to that company of any money consideration. The complainant insists that we should deduct from the outstanding capital stock of the Great Northern Railway Company this \$30,000,000 and allow that company to earn dividends not upon \$150,000,000, its actual issue, but upon \$120,000,000, the amount for which cash was received.

This claim is undoubtedly somewhat different from the two preceding. A stockholder by the purchase of a share of stock becomes a part of the corporation and must of necessity stand like every other stockholder whose stock is of the same grade. If the stock of the corporation has been inflated, his stock, even though he pays par for it, becomes tainted with that inflation. As a practical matter, this must be so. But we very much doubt whether in determining what rate of dividend the stock of a railway company may earn we can properly deduct in every instance watered stock. It is impossible to distinguish the spurious from the genuine. Those who received their stock without consideration have usually parted with it and that very stock, if it could be identified, is owned by its present possessor for a valuable consideration. The whole stock has gone upon the market, has assumed a market value, has become the subject of investment by innocent stockholders. We may undoubtedly and we should have in mind the manner in which this stock was issued and the consideration which was paid for it, but we do not think that we should, for example, treat the outstanding capital stock of the Great Northern Railway as \$120,000,000 and not \$150,000,000. These transactions ought to have been prevented to begin with. Great sums might have been properly saved the public by suitable supervision at the outset, but the evil has been done and for the most part can not be safely undone. If this Government in the past has permitted the "capitalization" of earnings and securities and the "conferring of benefits" it ought not to-day to penalize the innocent holder of the values thus created.

#### PRICE PAID FOR NORTHERN PACIFIC STOCK.

The same observation applies to the claim of the complainants that we ought to establish the earnings to which the Northern Pacific stock is entitled in reference not to the present value but to the

original cost of this stock. It will be remembered that of the \$155,000,000 common stock of that company now outstanding \$75,000,000 was originally a preferred stock and \$80,000,000 a common stock; that the preferred stock was issued upon the payment of \$10 per share in exchange for one-half share of old preferred and one-half share of old common, and that the \$80,000,000 of common stock was issued in exchange for common stock share for share, upon the payment of \$15 in cash. It is urged that this old common stock was utterly worthless and the preferred stock of very little value, so that this stock was really sold for \$10 and \$15 per share. It is still further pointed out that a very large quantity of the common stock was never taken under the plan of reorganization and was sold for \$15 per share.

Undoubtedly this fact must be kept in mind by the Commission in determining what earnings the Northern Pacific stock may fairly demand, but if that stock, estimated upon whatever may be the proper basis, whether by the money which had gone into the property or the cost of reproducing the property or the earning capacity of the property upon the basis of a reasonable rate, was actually worth \$100 per share, the mere fact that it sold at that time for much less is no reason why we should limit its earnings to-day.

Counsel for the complainants suggests certain other questions which are not equally free from difficulty. The foregoing statement of facts shows that the Great Northern Railway since 1890 has paid a dividend upon its outstanding stock, which was for the first year  $3\frac{1}{2}$  per cent, for the years 1892, 1893, 1894, 1895, 1896, 1897, 5 per cent; for the year 1898, 6 per cent; 1899,  $6\frac{1}{2}$  per cent; and for the remaining time 7 per cent. The first issue of Great Northern stock was at 50 cents on the dollar, and, as we have just seen, the total issue embraces \$30,000,000 at par for which no money was actually paid. The dividends paid by the Great Northern have yielded its stockholders an ample return upon the investment. In addition to this that company since it began operations has shown a surplus, including its investment out of earnings in permanent improvements, of some \$60,000,000. The Manitoba Company in addition to the payment of dividends upon its stock, of which three-fourths was an absolute gratuity, accumulated during the ten years of its existence a surplus of some \$10,000,000. It does not appear what surplus may have been accumulated by the other companies which the Great Northern controls.

Now, the complainants insist that this \$70,000,000 has been obtained by the imposition of unjust and unreasonable rates; that it belongs not to the Great Northern Company but to the public which has paid these rates, and that upon whatever basis we fix the return to which this company is entitled, we must first deduct this \$70,000,000.

A somewhat similar question is raised touching the estimated value of the right of way, which is embraced in the cost of the reproduction of these properties. It will be remembered that the total value of the structures and equipment of the Northern Pacific Company was stated by us to be not far from \$250,000,000. This represents the total cost at present prices of reproducing that entire property. Now, it was estimated that the land upon which this structure stands was worth \$107,000,000, almost one-third of the entire value of the property itself upon the basis of reproduction.

Much of this right of way was given to the Northern Pacific originally by the Government and by individuals. A considerable part of it has indeed been since acquired at large expense, but still the total cost to that company of this right of way has been but a fraction of the amount at which it is carried into this cost of reproduction. The complainants insist that the defendant Northern Pacific Company can not charge the public with this enormous sum for which it has never paid.

These two questions are not by any means the same, but the argument by which they are sustained on the part of the complainants is substantially identical and may be briefly stated.

In 1872 a considerable part of the business portion of the city of Boston was destroyed by fire. The legislature of the state of Massachusetts, then in session, authorized Boston to issue its bonds for the purpose of loaning money to individuals with which to rebuild this burnt district. Suit having been brought by a taxpayer to restrain the city from this action on the ground that the statute authorizing it was unconstitutional, the Massachusetts court enjoined the bond issue.

Its decision was placed upon the ground that no public tax could be levied for the benefit of a private enterprise. No matter how great the indirect benefit to the entire city of Boston might be from the rebuilding of these burnt stores promptly, the loan in the first instance was to a private individual; the public benefit was only an incident. Hence, the incurring of an obligation which might finally necessitate the imposing of a public tax was unconstitutional and void. *Lowell v. Boston*, 111 Mass., 454.

Somewhat before the great Boston fire the legislature of the state of Wisconsin authorized the county of Fond du Lac to make a money contribution in aid of the construction of a certain railroad in that county, and the county, in pursuance of this act of the legislature and in observance of its requirements, issued certain notes to the railroad company. These notes were not paid at maturity and suit was brought against the county by a bona fide purchaser into whose hands they had previously come.

The supreme court of the state of Wisconsin held that the act of the legislature authorizing this expenditure of money by the county was unconstitutional for the reason that it involved the levying of a public tax for the benefit of a private enterprise. It was said by the court that this railroad while sometimes spoken of as public was essentially a private undertaking; the funds with which it was constructed were private; its operation and control were private; its profits belonged to private individuals. Hence, the county of Fond du Lac could not by a general tax subsidize this private venture.

This holding of the state court was reversed by the Supreme Court of the United States. It was conceded in the opinion of that court that no public tax could be laid for a private enterprise, but it was said in the most emphatic terms that the construction of a railroad was not a private work. The service which it performed was public; its rates and its operation were subject to public control. The fact that the agency designated by the legislature for the performance of this public function happened to be a private corporation was of no significance; the purpose and not the means selected for the performance of that purpose must control. Since the purpose was public the legislature might authorize the county to levy a public tax in furtherance of this enterprise. The court used the following language:

Whether the use of a railroad is a public or a private one depends in no measure upon the question who constructed it or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the state. Though the ownership is private the use is public. So turnpikes, bridges, ferries, and canals, although made by individuals under public grants, or by companies, are regarded as *publici juris*. The right to exact tolls or charge freights is granted for a service to the public. The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used. That all persons may not put their own cars upon the road, and use their own motive power, has no bearing upon the question whether the road is a public highway. It bears only upon the mode of use, of which the legislature is the exclusive judge. *Olcott v. The Supervisors*, 16 Wall., 678, 695.

The levying of tolls by a railway for its transportation service is in essence the imposing of a tax upon the public which requires that service. This has always been so held of tolls imposed for the use of a turnpike, whether provided and maintained by the Government itself or by a private corporation under franchise from the Government, *Bussey v. Storey*, 4 B. & Ad., 98, and there can be no difference in principle between the tolls exacted for the right of passage over a highway and the charge for the transportation of freight or passengers upon the railway. *Railroad Commissioners v. Portland & Oxford R. R. Co.*, 63 Me., 275; *Wabash Ry. Co. v. Illinois*, 118 U. S., 586.

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From these cases and from many others cited in the brief of the complainants, to which no reference is here made, the following general principles are sought to be deduced:

The providing of the highways of a nation is an act of sovereignty essential to the existence of the nation. These highways may be provided directly by the Government itself or by private individuals under sanction of the Government. If the duty is delegated to a private individual, that individual, whether person or corporation, is the agent of the Government and acts subject to the well-known laws of agency. If being authorized to impose for its service a reasonable charge, it in fact imposes one that is excessive, it is answerable to the Government. If having imposed excessive tolls it still has in its possession the surplus over and above what would have resulted from a fair charge, that surplus belongs to the people and is held by the private corporation for the benefit of the people.

#### VALUE OF NORTHERN PACIFIC RIGHT OF WAY.

The practical importance of this question will be readily apprehended. The Northern Pacific Railway extends through a comparatively thinly settled portion of this country. In comparison with other sections land values along its line are small. Its lines penetrate no city which can fairly be called a great city. Nevertheless, the cost of its right of way equals almost one-third of the entire cost of reproducing that property.

The original cost of this right of way to the Northern Pacific Company was insignificant as compared with the present valuation placed upon it. What of it was taken at the time of the original construction, cost practically nothing. Much of it was given by the Government for the purposes of a right of way, which, it should be noted, is entirely distinct from the land grant of the company. The terminals in Spokane are mainly located upon the right of way of the railway. They cost the railway nothing whatever, and they are extended in this statement at \$7,000,000.

A considerable portion of its terminal property in Seattle has been purchased within the last seven or eight years, but the prices paid for this were nothing like the values now placed upon it. It was said by one witness for the defendants that the terminals of the Northern Pacific and Great Northern in Seattle had appreciated within the last few years 150 per cent, and that portions of their terminal lands had increased within that time from 500 to 600 per cent.

Whatever may be true to-day, in the comparatively near future the structures of the railways of this country will be less in value than the land upon which they stand, estimated as the value of the

right of way has been estimated in these cases. Whether, under the laws and Constitution of the United States, our railroads can demand a return not only upon the money which has been actually invested in these properties, but also upon this value, which has grown from almost nothing to vast proportions without the expenditure of money or the assumption of risk, is a question of tremendous importance.

Elaborate briefs have been submitted by counsel, at the request of the Commission, upon this question, but it does not seem profitable to discuss or decide it in this connection. We shall assume, in disposing of this case, that the cost of reproduction is properly estimated upon the basis followed by these defendants, and that the item of value of right of way is to stand as a part of that cost, like any other item.

#### SURPLUS EARNINGS.

We come now to the complainants' claim that the surplus which has been accumulated by these defendants from earnings should be first subtracted from the value of their properties in determining the amount upon which they may properly earn. The contention of counsel is that this surplus is a fund held by the railway company as trustee for the public, which this Commission should in some way manage to redistribute to the public in the establishment of just and reasonable rates. The railway is certainly an agent of the Government in the construction and operation of its property, and it is only allowed to charge for its services a reasonable compensation. Does it from this follow that the surplus of the Great Northern Railway, for example, which is said to be \$70,000,000, is held by that company in trust for the public? Does it follow, even, that the value of this property to-day should be decreased by \$70,000,000 upon the theory that the public has paid into the property that amount?

It is well understood that rates by all lines to Spokane from a given eastern destination must be the same. We have already held that in establishing a reasonable rate the strongest line should not alone be considered; the necessities of the weaker line must also be taken into account. In the application of this principle it is evident that a rate might be fixed which would pay a very moderate return by one line and a very handsome return by the other. Under the operation of these rates the Great Northern, by reason of its cheaper construction and its easier operation, might accumulate a surplus while the Northern Pacific did not. If so, could it be said that the surplus of the Great Northern had been improperly accumulated when its rates had been just and reasonable? Does the mere fact of the accumulation of a surplus by a particular road show that the rates upon that road have been excessive?

But assume that they have been. This \$70,000,000 to which the complainants refer in case of the Great Northern surplus is the result of the operations of the Manitoba and the Great Northern companies since the year 1880; that is, for twenty-seven years. During all that period this surplus has been gradually accumulated and has gone into the property. Should the Government to-day take note of that surplus for the purpose either of so reducing the rates of the company that no earnings can be made upon this much of the property or with a view to in some sense turn that surplus back again into the hands of the public?

There is no absolute test of a reasonable rate, and the Government has supplied none. During all this period the excess has gone into the property, which has gradually become more valuable, and this increased value has reflected itself in the market price of the securities of that company. It is impossible to restore what has been improperly taken in the way of excessive rates to those persons from whom it has been received. The Government, under those circumstances, can not lay hold on this surplus as a fund held in trust for the public.

This case strongly illustrates the fact that if any Government tribunal is to do justice between the railway and the public, if it is to feel any confidence in the correctness of its conclusions, its supervision must be continuous and not spasmodic. There must be some point of departure and from that point the knowledge of the Government must be accurate and complete. After earnings have once been "capitalized" and benefits have been "conferred," when the various interdependent organizations have been perfected, it is impossible to either know or to undo.

Having considered the claims of the respective parties touching the evidence introduced as to the value and earnings of these properties, we may now inquire what facts are established by this evidence and what the bearing of those facts is upon the issues before us. The complainants insist that even if the discrimination created by the imposition of higher rates at Spokane than at more distant points is not strictly within the inhibition of the third and the fourth sections, it is nevertheless a discrimination which should be removed provided this can be done without unduly reducing the revenues of these defendants. Otherwise stated, if their return upon the present basis of rates is excessive the excess should be removed by removing the discrimination complained of in this case. First, then, is there any excess?

Many governments construct and operate their own railways; ours has elected to discharge this function of sovereignty by delegation to private corporations, who, in the language of the Supreme

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Court of the United States, act as agents for the Government in this respect. Few governmental functions can be higher than the providing of proper highways, and the most essential highway under national control to-day is the railway. It is of first importance that our railway service should be efficient, for just in proportion as it is inadequate, industry must suffer and commerce languish. If the present system of private ownership is to be continued, sufficient inducement must be extended to private investors.

Capital will seek investment in railways for the same reason that it does in other enterprises, the amount forthcoming depending upon the attractiveness of the investment. This in turn is determined by two considerations, first, certainty; second, amount of probable return. If the Government of the United States were to guarantee an income of 4 per cent on all money invested in railroads, an abundance of capital would be offered. If that Government were to impose upon our railways such rates that not exceeding 4 per cent could be realized without giving a guaranty that anything whatever should be paid, it would be exceedingly difficult to procure funds for railway development. It seems certain that in the immediate future very large sums of money must be expended in improving and extending the railroad facilities of this country, and it is therefore extremely important that railroad investments should be made sufficiently attractive so that the necessary money for these improvements can be obtained. It is not necessary to-day that opportunity should be given for the accumulation of enormous fortunes by speculation in and manipulation of railroad securities, but it is necessary that railroad capital should be assured of fair treatment and of a suitable return; otherwise, this Government will find itself confronted with the problem of providing such railway capital from its own resources, for it is absolutely essential that railroad development keep pace with industrial and commercial requirements.

We turn now to the earnings of these companies.

It appears that from 1898 to 1907, inclusive, the Northern Pacific earned over and above all fixed charges, taxes, and other expenses, in addition to the payment of a dividend for every year except the first, in round numbers \$55,000,000. During the last six years of that period it earned in addition to the payment of its taxes and fixed charges from 10 to 15 per cent upon its capital stock of \$155,000,000.

The period covered by the operations of the Great Northern is seven years longer, extending from 1891 to 1907, inclusive, but these additional seven years covered a period of the greatest depression among railways in recent years, during which more than 25 per cent of all the railroad mileage of this country was at one time in the hands of receivers.



The surplus accumulated by that company during that period, in addition to fixed charges, taxes, and a dividend, usually of 7 per cent, paid upon many millions of stock issued without any money consideration, was, in round numbers, \$61,000,000. During the last six years of that period this company has also earned upon the par value of its capital stock from 10 to 15 per cent.

It is impossible to avoid the conviction that both these companies—and there is very little difference between the two in this respect—have enjoyed for the last half dozen years previous to June 30, 1907, excessive earnings.

In saying this we have in mind the fact that those years were years of unusual prosperity, but it must also be remembered that the development of the country served by these systems and the financial strength of the systems themselves put them beyond the possibility of a recurrence of the conditions of 1893. Nothing more conclusively shows this than the actual results of the year 1908.

This report was prepared before the financial returns for that year were available. According to the universal statement of railway managers it was one of unusual adversity. Almost without warning came an enormous falling off in business and revenues. Just as expenses do not ordinarily increase as rapidly as traffic upon a rising tide, so it was found impossible to reduce expenses at a moment's notice to meet the reduction in revenues. As the rates of these defendants ought not to be fixed altogether with respect to the recent years of prosperity above referred to, so neither should they be established upon the basis of this year of adverse conditions. The annual reports of these companies show that in this year of adversity the Great Northern paid its taxes, its interest, a dividend of 7 per cent upon its capital stock, and had remaining \$3,000,000. The Northern Pacific, after the payment of its taxes, its interest, and a dividend of 7 per cent upon its capital stock, had left \$9,000,000.

In order to understand the effect upon the revenues of these defendants of any order which might be made, we required them to furnish us a statement showing the loss of income which would be worked by applying terminal rates to the business which actually moved to Spokane for the year 1906. Since it was a work of much labor to determine these figures for an entire year, two months were selected which were said to be fairly representative, and it was assumed that the showing made in these months would indicate correctly the whole year. From these figures which have been worked out by taking actual shipments to Spokane and applying terminal rates it would appear that during the year 1906 the Great Northern would have lost in its revenues at Spokane \$340,484, and that the Northern Pacific,

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during the same time, by the application of terminal rates, would have lost \$477,139.

The rates attacked are made in pursuance of a well-defined scheme of rate making. All other intermediate territory pays higher rates in common with Spokane. Whatever rule is applied here must be applied elsewhere, and in deciding this question we must consider the effect upon the revenues of these defendants of applying terminal rates not only at Spokane but at all other intermediate territory. The defendants were therefore required to furnish, in addition to the above-mentioned computation as to Spokane, a further computation showing reductions in revenue if terminal rates had been applied to all business both east and west of Spokane. These figures show that the entire loss to the Great Northern would have been \$645,000, while the entire loss to the Northern Pacific would have been about \$1,197,000.

The effect upon the earnings of these defendants would not probably be limited to the loss of these sums. The present system of rate making has become a part of the commercial development of the Pacific coast, and any radical departure from that system would inevitably lead to agitation and changes of various kinds. The interveners, representing the coast towns, earnestly insist that rates from those cities toward the east are higher than rates from Spokane to the west and south. They demanded in this proceeding a reduction of those rates, and while we did not deem this a proper case in which to pass upon that question the demand will undoubtedly be renewed.

The complainants urge that the defendants, by charging a lower rate to Seattle from eastern destinations than is applied at Spokane, the intermediate point, discriminate against that locality, and that the Commission should order a removal of that discrimination. We have expressed the opinion that this contention is not well taken; that Seattle by virtue of its location upon the ocean can command a better rate from eastern territory than Spokane, situated 400 miles inland; that the carriers may meet this situation at Seattle by making a lower rate than is accorded Spokane. This is a disadvantage of location under which the city of Spokane rests and of which it can not justly complain. Spokane is entitled to ask of these defendants, not of necessity the same rate as Seattle, but a rate which is, under all the circumstances, just and reasonable, and our duty in the premises is to establish such just and reasonable rate.

It has been seen that these rates to Spokane and Seattle are of two general kinds, namely, class rates and commodity rates. These two kinds should be considered separately.

The Northern Pacific and the Great Northern establish class rates from St. Paul to Spokane and Seattle. These same defendants, in

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connection with other defendants, establish joint class rates from Chicago to Spokane and Seattle. There are no joint class rates east of Chicago. While railroad lines extending all the way to the Atlantic seaboard are parties to this proceeding, there is no petition before the Commission for the establishment of a joint through rate, and we can not therefore properly deal with these class rates east of Chicago, and shall not attempt to do so.

The class rates from St. Paul and Chicago to Spokane and Seattle are given on page 379 of this report. By referring to those tables it will be seen that the first class rate from St. Paul is the same to both Spokane and Seattle, while the first class rate from Chicago is 60 cents higher to Spokane than to Seattle. With some trifling exceptions the same relation is maintained in the other classes. Are these class rates from St. Paul and Chicago to Spokane unreasonably high?

The first class rate from New York to Chicago, a distance of approximately 1,000 miles, is 75 cents, and this rate is the basis for the making of all first class rates from the Atlantic seaboard into western territory east of the Mississippi River. The rate from St. Paul to Spokane is four times as great for a distance but one-third greater. It is said that this difference in rates is justified by different traffic and operating conditions, the two principal points of difference being that the cost of operation upon the transcontinental defendant line is greater than upon the Chicago-New York line and that the density of traffic is very much less.

For the purpose of putting in its true light this argument derived from greater density of traffic we have caused to be compiled from the annual reports of these carriers certain information which is given below, comparing the year 1897 with the year 1907:

	Gross earnings from operation, per mile.		Net earnings from operation, per mile.		Ratio of operating expenses to earnings.		Tons carried one mile.	
	1897.	1907.	1897.	1907.	1897.	1907.	1897.	1907.
Northern Pacific Ry. Co.....	\$4,074	\$12,574	\$1,338	\$5,666	P. ct. 67.15	P. ct. 54.94	261,029	1,011,164
Great Northern Ry. Co.....	3,950	9,806	1,805	3,972	54.31	58.68	305,377	941,512
Union Pacific R. R. Co., including Oregon Short Line R. R. Co., and Oregon R. R. & Navigation Co.....	5,754	13,403	2,300	6,288	60.04	53.08	389,841	1,010,543

Of all lines between New York and Chicago the Lake Shore & Michigan Southern is perhaps the most profitable. The gross earnings per mile of that road in 1897 were only slightly in excess of the gross earnings of the Union Pacific and the Northern Pacific to-day, and its percentage of operating expenses was higher than either of those lines at the present time. There was in 1897 no through line from Chicago to New York whose gross earnings per mile were

materially greater than those shown by the two defendants last named and none which showed as low a ratio of operating expenses. The thing which is not properly understood nor allowed for is the wonderful change in conditions upon these transcontinental roads due to the increase in traffic in the last decade. During that time every condition which should make for a lower rate has come into existence, while the rates themselves, on the whole, instead of being reduced have been advanced.

It was said in the original Spokane case, 5 I. C. C. Rep., 478, that these class rates were not competitive. Whatever may have been the case then, this is not strictly true now. At that time the class rate graded up from the Missouri River to the Atlantic seaboard, being, first class, \$3.50 from St. Paul to Seattle, as compared with \$4.20 from New York. To-day, under the influence of competitive conditions, class rates are in the main the same from all territory east of the Missouri River to Pacific coast terminals. But while these class rates to the coast cities are influenced to some extent by competitive conditions, this is not true to the same extent as with commodity rates, and whatever may be said of such rates from points east of St. Paul, we are clear that the present scale of class rates from St. Paul to Seattle affords ample compensation to the defendants.

In the original case the Commission established from St. Paul to Spokane class rates which were 82 per cent of those to Seattle. The first class rate from St. Paul to Seattle was then \$3.50; it is now \$3. In our opinion reasonable class rates from St. Paul to Spokane would be obtained by reducing the present Seattle rate about 16½ per cent.

Class rates from Chicago to Spokane may properly be higher than those from St. Paul by the following arbitraries:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	50	42	33	21	17	21	17	14	12	11

The resulting rates will be substantially those which have been applied in the past from St. Paul to Seattle, and which we have found to be sufficiently high without reference to competitive conditions. The distance from Chicago to Spokane is but slightly greater than that from St. Paul to Seattle, and there is no condition of transportation which would justify the maintenance of higher class rates.

In our opinion, therefore, upon a consideration of all the facts and circumstances, the rates named below would be reasonable class rates to be charged for the future from St. Paul and Chicago to Spokane:

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From—	To Spokane.									
	1	2	3	4	5	A	B	C	D	E
St. Paul.....	250	217	183	158	133	133	104	83	79	71
Chicago.....	300	259	216	179	150	124	121	97	91	82

While it is not the duty of this Commission to declare the divisions of this rate, it is proper to say that in our opinion in the making of rates from points east of the Missouri River to Spokane the line leading to the Missouri River ought not ordinarily to be allowed its full local rate. Joint through rates should be established and all lines participating in the rate should, in consideration of the long distance covered, abate something from the ordinary local charge.

We next come to the commodity rates, and here the problem presented is much more difficult. As already said, there are some 1,600 commodity items from eastern destinations to Seattle, and in most cases the rates so established are lower to Seattle than to Spokane. The complainants insist that this is unlawful, first, because a discrimination is created against Spokane, and, second, because the rates to Seattle are in and of themselves reasonable rates to apply at Spokane.

We have already seen that the Seattle rate is induced by water competition and that the carriers do not, therefore, of necessity violate either the third or the fourth sections in maintaining from a given point of origin a higher rate at Spokane. It remains to inquire whether these rates would be reasonable to apply at Spokane irrespective of Seattle.

While the complaint attacks generally all commodity rates to Seattle which are less than those upon the same article to Spokane, only 34 of these rates are specifically referred to. No testimony was taken as to any articles except these, and in the view which the Commission has taken of its authority under the statute, we can only fix specific rates upon these articles which have been made the subject of specific complaint, although we must consider what our probable action would be if required to pass upon the remainder of these commodity rates, and its probable effect.

These terminal rates to Seattle apply generally from all points upon the Missouri River and east. It is evident that in establishing rates to Spokane which are just and reasonable we must have regard to some extent to distance; that is, we can not establish the same rate from New York, Chicago, and St. Paul, but must increase the rate as the distance increases. We will first inquire, therefore, whether these Seattle rates are just and reasonable to apply as local rates from St. Paul to Spokane. While terminal rates are

usually the same from all eastern points of origin, the Chicago-Seattle rate will be selected as representative.

The complainants insist that upon this point the past conduct of the defendants is conclusive upon the reasonableness of the rates. It is 400 miles from Chicago to St. Paul, and another 400 miles from Spokane to Seattle. For many years past the defendants have maintained the Chicago-Seattle rate through St. Paul and Spokane. Further, the rate from New York to Seattle is usually the same as from Chicago, and under this rate business has for many years moved habitually through St. Paul and Spokane to Seattle. The distance from New York to Seattle by this route is 3,200 miles. While this competitive rate can not be selected as the measure of a reasonable rate from St. Paul to Spokane, it must be assumed that the business has been handled from New York and Chicago at some profit. It is urged with great force that a rate which pays the cost of the movement from New York to Seattle, a distance of 3,200 miles, through St. Paul and Spokane, must yield a reasonable profit when applied as a local rate for the 1,500 miles of that haul between St. Paul and Spokane.

We have examined the ton-mile revenue which would be produced by applying these Chicago-Seattle rates as locals between St. Paul and Spokane, and we find that in almost every case it equals, and in most cases exceeds, their revenue under the rates which they have voluntarily established for the transportation of fruits, vegetables, and other products of the Pacific coast states to the east.

We have compared these rates with those upon similar commodities for corresponding distances in various parts of the United States, and when due allowance is made for difference in condition, it is believed that such rates are fairly in line with those elsewhere, excepting always transcontinental rates themselves, which are really under attack in this proceeding. The distances, for example, from Cleveland to San Antonio, from Boston to Omaha, and from Chicago to El Paso are about the same as from St. Paul to Spokane. Below is given a table showing rates in force January 1, 1909, upon these commodities between the points named:

Commodity.	Boston to Omaha.	Cleveland to San Antonio.	Chicago to El Paso.	Chicago to Seattle.	St. Paul to Spokane.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Tinware, n. o. s., in boxes, barrels, or crates.....	68	107	118	85	190
Flow points, in bundles.....	57½	92	95	110	164
Shovels, spades, and scoops.....	62	103	106	135	164
Fruit jars and glasses.....	57	91	93	85	190
Canned corn, peas, and beans.....	57	67	69	90	125
Belted, canvas, or rubber.....	84	139	142	120	205
Bicycles, crated.....	136	187	179	250	335
Blank books with flexible paper covers.....	62	144	132	125	170
Blank books, n. o. s.....	119	144	132	125	170

Commodity.	Boston to Omaha.	Cleveland to San Antonio.	Chicago to El Paso.	Chicago to Seattle.	St. Paul to Spokane.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Paper tablets.....	53	96	98	125	154
Books, n. o. s.....	119	144	126	140	225
Bottles, wine or beer.....	57	91	93	75	90
Drugs and medicines, n. o. s.....	103		179	150	200
Cotton ducks and denims.....	100		164	100	175
Glass, common window.....	57	81	83	90	150
Glassware, n. o. s.....	68	121	132	120	190
Dry paint in bags, kegs, barrels, or casks.....	60	51	51	90	115
Paints in oil, buckets or kits.....	57	71	73	90	115
Paint in oil, iron drums, kegs, etc.....	57	71	73	90	115
Paper bags.....	53	96	98	100	120
Rubber boots and shoes.....	136	181	179	150	235
Circular saws without frames, in boxes.....	127	164	158	150	228
Stoves, alcohol, gas, etc., with frames.....	63	96	98	150	180
Stoves, n. o. s.....	57	96	98	130	155
Twine, in bales, boxes, or barrels.....	62	121	132	95	167
Cordage, in packages.....	62	121	132	95	167
Whealbarrows, k. d.....	59½	101	104	90	141
Windmills, k. d.....	60	92	95	135	155
Copper wire.....	68	121	132	110	188
Wire fencing, in rolls.....	59	74	74	80	105
Woodenware.....	68	107	118	125	174

We have carefully considered the probable effect of the application of such rates upon the revenues of these defendants in the light of the figures already given in this report. In so doing it has been assumed that other commodities must receive substantially the same treatment as is accorded to these and that reductions at Spokane must be followed by corresponding reductions at other points.

It should also be noted that the percentage of shrinkage upon all commodities, if the Seattle-Chicago rate were to be established as the local rate from St. Paul to Spokane, would be nothing like as great upon the average as that in case of the above. Naturally, the complainants have selected those articles where the showing is most favorable to the contention of Spokane. In many instances commodity rates at the present time are the same or nearly the same from eastern points of origin to both Spokane and Seattle. Below is given a table enumerating a few of these commodities, the rates being those now in effect from Chicago to Seattle and Spokane.

Commodity.	Rate to—	
	Seattle.	Spokane.
	<i>Cents.</i>	<i>Cents.</i>
Beer, beer tonic, malt, ale, and porter.....	110	100
Flour (wheat, rye, or buckwheat) and corn meal.....	75	80
Bollers, steam, under 30 feet in length, and fire brick for use in same.....	150	140
Machines and machinery.....	150	150
Oil cake and oil-cake meal.....	75	75
Pipe, sewer (clay), and drain tile.....	65	75
Butter, butterine, oleomargarine, dressed poultry, eggs, and cheese.....	200	200
Fertilizer, n. o. s., including dried blood.....	60	60
Desks, and desks and book cases combined.....	160	160
Kitchen safes and wardrobes, k. d., flat and compact, net cost not to exceed \$9 each.....	105	105
Sideboards, buffets, combination sideboards and buffets, and sideboards and chiffoniers, net cost of each piece not to exceed \$16.....	160	160
Mineral water bottles, in original packages, empty, second hand, returned.....	75	75
Potatoes.....	75	75
Terra cotta, building.....	75	75

Examining in detail the rates upon the 32 articles in question, in the light of all the facts and circumstances, we are of the opinion that the Chicago-Seattle rate on the first item, "tin boxes," would be too low, and that a just and reasonable rate from St. Paul to Spokane would be \$1. Our conclusion as to "fruit jars and glasses" is the same. The present rate on "bottles, wine, and beer" of 90 cents is, in our opinion, sufficiently low already. The Seattle rate on "cotton ducks and denims" is a carload rate, especially induced by water competition. This commodity moves generally upon an any-quantity rate. We see no reason why this rule should be departed from in case of Spokane, and think that a rate of \$1.50 per 100 pounds in any quantity is sufficiently low. We are also of the opinion that the rate of \$1.50 upon boots and shoes ought to be \$1.75, and that upon rope and cordage \$1.25. Otherwise these rates seem to be just and reasonable.

We are further of the opinion that just and reasonable rates upon these commodities from Chicago to Spokane would be obtained by adding 16½ per cent to the rates thus found to be reasonable from St. Paul to Spokane.

We are therefore of the opinion that the following rates in cents per 100 pounds are just and reasonable charges to be applied for the future to the shipment, in carloads, of the various commodities named from Chicago and St. Paul to Spokane, the minimum to be in all cases the same as that applied upon similar business to Seattle.

Commodity.	Rate from—	
	St. Paul.	Chicago.
	Cents.	Cents.
Tin boxes and lard pails, n. o. s. ....	100	117
Boxed, crated or jacketed. ....	100	117
Nested in boxes, barrels, or crates. ....	100	117
Carpets, n. o. s. ....	185	216
Plow points. ....	110	128
Shovels, spades, scoops, in packages. ....	135	157
Fruit jars and glasses. ....	100	117
Canned corn. ....	90	105
Canned beans. ....	90	105
Canned peas. ....	90	105
Belting, cotton or rubber. ....	120	140
Bicycles, boxed. ....	250	292
Bicycles, crated. ....	250	292
Blank books and tablets. ....	125	146
Books, n. o. s., boxed. ....	140	163
Drugs and medicines. ....	150	175
Cotton duck and denims, any quantity. ....	150	175
Glass, common, window, under 68 inches. ....	90	105
Glass, common, window, all sizes, n. o. s. ....	90	105
Paint, dry, in cans (packed in boxes or barrels), or in barrels, cases, kegs, kits, boxes, or iron drums. ....	90	105
Paint, in oil, in cans (packed in boxes or barrels), or in barrels, cases, kegs, kits, boxes, or iron drums. ....	90	105
White or red lead, dry or in oil, in cans (packed in boxes or barrels), or in barrels, cases, kegs, kits, boxes, or iron drums. ....	90	105
Paper bags, plain. ....	100	117
Paper bags, printed. ....	100	117
Rubber boots and shoes. ....	175	204

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Commodity.	Rate from—	
	St. Paul.	Chicago.
	<i>Cents.</i>	<i>Cents.</i>
Saws, circular, etc., on boards.....	150	175
Saws, circular, etc., in boxes.....	150	175
Water heaters, gas or gasoline, instantaneous.....	170	198
Stoves and ranges (cast iron), cooking, etc.....	130	148
Stoves, air-tight heaters (sheet iron).....	150	175
Glassware, n. o. s.....	120	140
Twine and cordage, cotton, hemp, jute, etc., in bales, boxes, or barrels.....	125	146
Wheelbarrows, k. d., flat.....	90	105
Windmills, k. d.....	135	157
Wire, copper.....	110	128
Wire, fencing, in rolls.....	80	93
Woodenware, in packages.....	125	146

No attempt has been made to deal with less-than-carload commodity rates. The carload rates which have been established will necessitate a revision in some cases of the less-than-carload rate, but the considerations upon which the relation of these rates depends were not discussed before the Commission, and the carriers themselves are better qualified to deal intelligently with that subject. If they decline to do so, or if in the opinion of the complainants proper less-than-carload rates are not established, the matter can be called to our attention. We shall not attempt in this proceeding to establish either class or commodity rates east of Chicago.

We realize that this case should be disposed of in some more comprehensive manner, but after much consideration have been able to determine upon no other order which would not be open to legal objection. The carriers may, if they desire, present to the Commission, before the effective date of the order, some scheme for the readjustment of these intermediate rates. If approved, the Commission will strike off the present order in favor of that plan.

We wish to emphasize the fact that the conclusion reached is of necessity in a measure experimental. If in an honest attempt to work out this idea any unexpected difficulty is encountered or any unforeseen result produced or if the reduction in revenue is, upon an actual trial, more than has been anticipated, the Commission will, upon application of either party, make such modification of its order as may seem just.

If the defendants simply establish the rates ordered in this proceeding and stop there, or if in fixing other rates they do not, in the opinion of the complainants, establish those which are just and reasonable to Spokane, the complainants may file supplemental petition.

The order in this case will be made effective on May 1. If the Commission is satisfied that the carriers will require additional time to check in rates upon other commodities and to other points, the effective date will, upon application, be extended.

No. 1912.

G. W. JONES LUMBER COMPANY

v.

CHICAGO &amp; NORTHWESTERN RAILWAY COMPANY.

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*Submitted February 10, 1909. Decided March 1, 1909.*

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Defendant has classified the various lumber-producing points on its lines in northern and northeastern Wisconsin in groups, the same carload rates on lumber applying from all points in a particular group to points on defendant's lines in Illinois and Iowa. Wabeno has been placed in the Rhinelander group, from which group the rates to points in Illinois and Iowa are from one-half cent to 1 cent higher than the rates from the Wausau group, which adjoins the Rhinelander group on the southwest; *Held*, That Wabeno, by reason of its geographical location and its distance by rail from Chicago and other points in Illinois and Iowa, is entitled to the same rates as points in the Wausau group.

*A. E. Thompson* for complainant.

*S. A. Lynde* for defendant.

#### REPORT OF THE COMMISSION.

**LANE, Commissioner:**

The Chicago & Northwestern Railway Company, defendant herein, has classified the various lumber-producing points on its lines in northern and northeastern Wisconsin in groups, the same carload rates on lumber applying from all points in a particular group to points on defendant's lines in Illinois and Iowa. Wabeno, at which point the complainant has a sawmill, and from which it ships lumber and lumber products over defendant's lines, has been placed in the so-called Rhinelander group. The Wausau group adjoins the Rhinelander group on the southwest. The rates from the Rhinelander group to Chicago and other points in northern and western Illinois on defendant's lines are 1 cent per 100 pounds higher than the rates from the Wausau group. Similarly the rates to all points in Iowa on the defendant's lines are from one-half to 1 cent per 100 pounds higher on traffic from the Rhinelander group than from the Wausau

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group. Wabeno is in the apex of the angle which forms the southerly extension of the Rhinelander group and is only a short distance from the line which forms the boundary with the Wausau group. The railroad mileage from Wabeno to Chicago and other points on defendant's lines in Illinois and Iowa is somewhat less than the mileage from many points in the Wausau group to the same destinations.

Complainant contends that the placing of Wabeno in the Rhinelander group is arbitrary and unreasonable and subjects that point to undue prejudice and disadvantage.

We hold that Wabeno, by reason of its geographical location and its distance by rail from Chicago and other points reached by defendant's lines in Illinois and Iowa, is entitled to the same carload rates on lumber to the points in question as the defendant has accorded to points in the Wausau group. An order will be entered in accordance with this conclusion.

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No. 1668.

## CARSTENS PACKING COMPANY

v.

## OREGON SHORT LINE RAILROAD COMPANY ET AL.

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*Submitted January 9, 1909. Decided March 1, 1909.*

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Complainant made shipments of cattle from Nampa, Idaho, to Tacoma, Wash., but in order to combine these cars with others instructed that the shipments go forward on combination rates based on Ontario, Oreg. This combination was higher than the through rate; *Held*, That under these circumstances, the reasonableness of the rates charged not being in issue, the Commission has no authority to grant relief.

*J. E. Belcher and Ellis, Fletcher & Evans* for complainant.

*F. C. Dillard and P. L. Williams* for Oregon Short Line Railroad Company.

*F. C. Dillard, W. W. Cotton, and Charles H. Bates* for Oregon Railroad & Navigation Company.

*George T. Reid* for Northern Pacific Railway Company.

## REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This complaint grows out of an alleged overcharge on 6 cars of cattle shipped from Nampa, Idaho, and 5 from Ontario, Oreg., to Tacoma, Wash. The issue presented can not be more clearly set forth than by quoting the third, fourth, and fifth paragraphs of the complaint, which are as follows:

III. That on March 14, 1907, complainant, through its agent, F. A. Phillips, shipped from Nampa, Idaho, the following cars of cattle to Tacoma, Wash., and that on the same day also shipped from Ontario, Oreg., through its agent, the following cars of cattle consigned to itself at Tacoma, Wash.: Nampa cars SP-77725, WLT-14494, UP-60191, Mather, OSL-1247, Q-60880, WAB-18201—Ontario cars SP-76590, OR&N-3667, SP-75590, OSL-13044, and UP-53031.

IV. That prior to the shipment of these cattle complainant instructed its agent, Mr. F. A. Phillips, to bill cars from Nampa, Idaho, to Ontario, Oreg., at the published rate of \$19.80 per car, and from the last-named point bill the  
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entire 11 cars through to Tacoma, Wash., at the published through rate of \$116 per 36-foot car.

V. That the complainant's agent made inquiries of the carriers' agent at Nampa, Idaho, as to the advantage to be gained by the billing as suggested by complainant, and was advised that there is nothing to be gained, and complainant's agent, believing carriers' agent to be in a better position to advise in this respect, billed the Nampa cars in the manner he had been accustomed to, with the result that they were billed through to Tacoma, Wash., at a combination of rates amounting to \$159.56 per 36-foot car, and from Ontario, Oreg., to Tacoma, Wash., at a combination of rates amounting to \$148.56 per 36-foot car, making a total on the 6 cars from Nampa, Idaho, of \$957.36, and on the 5 cars from Ontario, Oreg., \$742.80, or a total on the entire 11 cars of \$1,700.16, while had this shipment been billed in accordance with the complainant's instructions the charges on the cars from Nampa, Idaho, would have been but \$135.80 each, and from Ontario, Oreg., \$116 each, making a total on the 6 cars from Nampa, Idaho, of \$814.80, and on the 5 cars from Ontario, Oreg., of \$580, or a total of \$1,394.80, making a total overcharge of \$305.36.

From complainant's statement of the case, the Commission may grant no relief, as the tariffs of defendants on file with the Commission show that the rates charged were in accordance therewith. Complainant frankly states that it instructed its agent to ship these cars in a way that it claims would have been less costly and that such agent after consultation with the defendants' representative shipped them contrary to the instructions, as a result of which complainant was charged the higher rate in accordance with the published tariffs. Under these circumstances, the reasonableness of the rate charged not being in issue, the Commission has no authority to grant relief.

The difficulty seems to arise from the fact that defendants have a train-load rate, 10 cars, on cattle from Ontario, Oreg., to Tacoma, Wash. Complainant claims the right to have shipped his 6 cars from Nampa, Idaho, to Ontario, Oreg., at the local rate of \$19.80, and there combine them with the 6 cars originating at Ontario, and secure the benefit of the train-load rate from Ontario to Tacoma.

As above set forth, owing to the fact that complainant's agent instructed them to be billed through from Nampa, the question whether complainant has a right to consolidate shipments at one point to take advantage of the train-load rate can not be decided in this case.

Nothing herein shall be deemed to imply an official sanction of trainload rates, as that question is not before the Commission.

For the reason stated, the complaint is dismissed.

15 I. C. C. Rep.

No. 1657.  
CARSTENS PACKING COMPANY  
v.  
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

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*Submitted January 9, 1909. Decided March 1, 1909.*

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Defendants' tariff, applicable to the transportation of cattle from Anaconda, Mont., to Tacoma, Wash., names rate of \$110 per 36½-foot car. Complainant shipped 2 carloads of cattle between these points, but the cars furnished were only 34 feet in length, which resulted in an excess charge. Since filing complaint defendants' tariff has been amended so as to provide that when cars less than 36 feet in length are furnished for carriers' convenience a reduction of 3½ per cent per foot will be made from rates applicable to cars 36½ feet in length; *Held*, That, following the ruling laid down in a former case of the same title, 14 I. C. C. Rep., 577, tariff of defendants prior to amendment as indicated was unreasonable. Reparation awarded.

*J. E. Belcher and Ellis, Fletcher & Evans* for complainant.

*George T. Reid* for Northern Pacific Railway Company.

*E. C. Thomas* for Butte, Anaconda & Pacific Railway Company.

REPORT OF THE COMMISSION.

*LANE, Commissioner:*

On April 9, 1907, complainant shipped 2 carloads of cattle from Anaconda, Mont., over the lines of defendants to Tacoma, Wash., and was charged therefor the sum of \$220. At the time the shipment was made the tariffs provided a rate of \$110 per car 36 feet 6 inches in length, with the provision that for every additional foot in length 3½ per cent should be added to the rate, but made no provision when the cars were shorter than 36 feet 6 inches. Since the filing of the complaint, to provide for this apparent inconsistency, the carriers have inserted a rule that a like reduction of 3½ per cent per foot shall be made. The cars furnished complainant were 34 feet in length.

This case is identical with No. 1550, decided by the Commission November 24, 1908, 14 I. C. C. Rep. 577, the complainants and defendants being the same. Following the ruling laid down in that case we hold that the tariff of defendants prior to its amendment, as indicated, was unreasonable and unjust, and that complainant is entitled to reparation in the sum of \$19.35, being at the rate of 3½ per cent per foot for the difference in the length of the cars furnished and a 36-foot 6-inch car, the standard adopted by the carrier as the basis for the \$110 rate. An order will be entered accordingly.

No. 1662.  
**CARSTENS PACKING COMPANY**  
*v.*  
**BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY**  
**ET AL.**

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*Submitted January 19, 1909. Decided March 1, 1909.*

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Complainant shipped 2 carloads of cattle from Anaconda, Mont., to Tacoma, Wash., for which it was charged \$20 more than the tariff rate received by the initial carrier for alleged special service; *Held*, That complainant is entitled to reparation from the initial carrier for the difference between what was actually charged and the tariff rate.

*J. E. Belcher and Ellis, Fletcher & Evans* for complainant.  
*C. F. Kelly, D. Gay Stivers, and W. B. Rodgers* for Butte, Anaconda & Pacific Railway Company.  
*George T. Reid* for Northern Pacific Railway Company.

**REPORT OF THE COMMISSION.**

**LANE, Commissioner:**

On Saturday, April 14, 1906, complainant shipped 2 carloads of cattle from Anaconda, Mont., to Tacoma, Wash., over defendant's lines, for which it was charged \$296.10, while the tariffs in effect provide for a rate of \$138.05 per car, or a total of \$276.10. It thus appears that \$20 more than the tariff rate was charged and collected. The Butte, Anaconda & Pacific Company operates freight trains only on Tuesdays and Fridays from Anaconda to Stewart, where it connects with the Northern Pacific, while these shipments were made on Saturday. This road claims that in order to render the special service of moving the cars on Saturday it entered into a contract with complainant for \$10 per car for such movement, and that amount was paid.

There is no dispute that \$20 in excess of the published tariff was charged and collected, which was paid to the Butte, Anaconda & Pacific, the Northern Pacific receiving no part thereof.

15 I. C. C. Rep.

The act to regulate commerce provides that carriers must publish and file their rates and that it is unlawful for the carrier to charge and collect any other rate than those so published. The law further provides that any shipper may complain to the Commission of any act of the carrier which is in violation of the law and that the Commission may make reparation therefor. The Butte, Anaconda & Pacific Railway Company having admitted that it has charged more than the published rate, the Commission holds that complainant is entitled to reparation in an amount equal to the difference between what was actually charged and collected and the rate that should have been charged and collected under the tariff in effect, and an order will be entered for reparation in the sum of \$20.

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No. 1897.  
NATIONAL LUMBER COMPANY  
*v.*  
SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD  
COMPANY.

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*Submitted February 17, 1909. Decided March 1, 1909.*

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Prior to August 28, 1906, defendant allowed shippers a yarding-in-transit privilege on lumber shipped from San Pedro to Los Angeles and subsequently reshipped to other destinations. This privilege was not covered by published tariff. Shippers were denied the benefit of this privilege between August 28, 1906, and June 1, 1907, when it was made effective in defendant's regularly established tariff. On complaint asking reparation on shipments moving during the period in which the yarding-in-transit privilege was not allowed; *Held*, That reparation can not be awarded because a carrier has ceased to grant an unpublished privilege, which amounted to nothing less than a departure from the legal tariff, and that transit privileges can not be given a retroactive effect.

*R. L. Horton* for complainant.

*W. R. Kelly* and *A. S. Halstead* for defendant.

REPORT OF THE COMMISSION.

*LANE, Commissioner:*

Prior to August 28, 1906, complainant and other shippers similarly situated were accorded by defendant a so-called "yarding-in-transit" privilege on shipments of lumber transported from San Pedro to Los Angeles and reshipped to other destinations. That is, on shipments of lumber and lumber products from San Pedro to Los Angeles the defendant assessed its regular local rates. When such lumber was subsequently reshipped from Los Angeles, the amount previously collected for the movement from San Pedro to Los Angeles was credited as part of the charges for the through transportation from San Pedro to the point of ultimate destination. The net result of this arrangement was that lumber could be shipped from San Pedro to Los Angeles and reshipped to other points for the same charges

15 I. C. C. Rep.

as when shipped in continuous transit from San Pedro to the same final destinations.

It appears that this privilege was not carried in defendant's tariffs. Upon the enactment of the Hepburn law defendant refused to allow shippers the benefit of this yarding-in-transit privilege until the 1st day of January, 1907, when it was covered by regularly established tariffs. Between the 28th day of August, 1906, and the 1st day of January, 1907, the period during which this privilege was withheld, complainant shipped some eight cars of lumber from Los Angeles to various Nevada points. This lumber had previously been carried by defendant from San Pedro to Los Angeles at the regular local rates. When reshipped from Los Angeles to final destination, charges were assessed in accordance with the duly established rates for that transportation. If the yarding-in-transit privilege had been effective during the period in which these shipments moved, charges in the amount of \$771.31 would have been remitted to complainant on account of the shipments in question. This complaint is now brought to recover the amount aforesaid.

It seems clear from the facts stipulated that the withdrawal of this yarding-in-transit privilege operated to cast upon complainant and other shippers similarly situated a new and perhaps an unexpected burden, but we can not award damages because a carrier has ceased to grant unpublished privileges which amounted to nothing less than rebates from the tariff rates. The yarding-in-transit privilege given prior to the Hepburn Act was illegally given, because it was not filed with the Commission and published in the tariffs of the carrier. It was a practice, loose, illegal, and general, which the Commission can not accept as the basis of an award of damages. Nor can we find justification for making the provisions of the present tariff granting the privilege retroactive in their effect.

The complaint will be dismissed.

15 I. C. C. Rep.

No. 1836.

HOLLEY MATTHEWS MANUFACTURING COMPANY  
*v.*  
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY  
ET AL.

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*Submitted February 16, 1909. Decided March 1, 1909.*

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Reparation awarded for unreasonable rate for the transportation of certain shipments of cottonwood box shooks from Greenville, Miss., to Cedar Rapids, Iowa, but for reasons stated in the decision no order made prescribing rate for the future.

*U. G. Holley* for complainant.

*Blewett Lee* for defendants.

REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

The complainant shipped between July 27, 1908, and September 28, 1908, 22 carloads of cottonwood box shooks from Greenville, Miss., to Cedar Rapids, Iowa, over the lines of the defendants. The published through rate at the time these shipments moved was 27 cents per 100 pounds, and this was paid by the complainant. At the same time there was in effect a rate on cottonwood and cottonwood box shooks of 10 cents from Greenville to Cairo, and a rate on lumber generally, including box shooks, of 14 cents from Cairo to Cedar Rapids, producing a combination of 24 cents per 100 pounds.

The defendants concede that the through rate ought not to have exceeded 24 cents, the combination of the locals, and state that the higher rate resulted from oversight in the construction of their tariffs. The lumber rate from Greenville to Cairo was 13 cents, producing a combination of 27 cents, and the tariffs of the defendants named this through rate on lumber, but omitted to specify the lower rate upon cottonwood.

It is evident, therefore, and the defendants concede, that the complainant is entitled to reparation by the amount of 3 cents per 100 pounds upon its shipments, which aggregates \$237.08, and an order

15 I. C. C. Rep.

will be made for the repayment of that sum, with interest from the 25th day of September, 1908.

The defendants, in answering, asserted the reasonableness of the 27-cent rate as applied to the shipments in question and denied their liability to the complainant in damages. After the case had been set down for hearing they wrote to the complainant and to the Commission that they were willing to concede the unreasonableness of the rate charged upon these shipments and to consent to an order of reparation, provided the Commission would not establish the 24-cent rate for the future. The complainant also stated to the Commission upon the hearing that it would be satisfied with that disposition of the case.

This Commission can not undertake by its orders to ratify the agreement of parties as to past or future rates. Before it makes an order for reparation or establishes a rate for the future it must have some opinion of its own upon the reasonableness of the rate involved. Where, as in this case, complaint has been filed challenging the reasonableness of a rate, which the defendant has answered by asserting that the rate is reasonable, the Commission, if it finds that the rate has been unreasonable in the past and awards reparation for that reason, will ordinarily inquire what rate would be reasonable for the future and establish that rate by its order. In this case we did not feel at liberty to award reparation upon the representation of the parties without an inquiry into the reasonableness of the rate involved.

It was suggested upon the hearing that an order might be made requiring the defendants to maintain a through rate which was no greater than the sum of the locals. Instances are conceivable in which an order of this kind might be of some value to the shipping public, but such is not this case. These defendants have no desire to maintain a higher through rate between these points than the local combination. The existence of such a rate at the time of the movement of these shipments was a pure inadvertence. Although an order of this kind were in effect, both the through rate and the locals would still be entirely at the will of the defendants and might be varied on thirty days' notice. The rate upon lumber from Cairo to Cedar Rapids has, since this complaint was filed, been advanced 2 cents per 100 pounds, and the combination upon cottonwood now makes St. Louis 25 cents instead of 24 cents. The only order which would impose any restraint upon these defendants would be one fixing the through rate, and this order, if any, should be made.

Before we direct these defendants to maintain a rate of 24 cents for the future, we must be of the opinion that this would be a reasonable requirement. Can we fairly reach this conclusion?

Some years ago cottonwood lumber was of little value, its uses being extremely limited. Large quantities of this timber are tributary to the Yazoo & Mississippi Valley Railroad, and that company, for the purpose of inducing its movement to market, established a rate to Ohio River crossings 3 cents lower than was applied to other kinds of lumber, except gum. To-day cottonwood has established itself as a wood of value. The logs are worth from \$5 to \$6 per 1,000 upon the stump. Cottonwood sells at the mill at Greenville for from \$16 to \$18 per 1,000 feet. Box shooks, which are the sides, tops, and bottoms of boxes ready to nail together, and which require a certain amount of labor in manufacturing and involve a certain amount of waste, are worth at the mill in Greenville from \$26 to \$27 per 1,000 feet.

The distance from Greenville to Cedar Rapids is 856.34 miles. The lumber rate was, when these shipments moved, 27 cents. Box shooks do not load quite as heavily as lumber. Considering the value of this commodity and the incidents of its transportation, no very good reason appears why it might not take as high a rate as lumber. The defendants have voluntarily established and maintained a lower rate for the purpose of developing a business in cottonwood, and it is possible that there may be commercial or competitive elements which would render an advance of this rate unjust, but upon this point we have no information.

As long as the defendants maintain the lower rate upon cottonwood and cottonwood box shooks from Greenville, and similar points, to Cairo, the complainant and other shippers should have the benefit of the lower through rate. But we are not prepared to say at this time that the defendants might not properly advance the rate on cottonwood box shooks to Cairo which would render proper an advance in the through rate. No order will, therefore, be made as to the future. If the defendants do increase the rate, any shipper conceiving himself aggrieved can file complaint and we can then form a more intelligent opinion upon the propriety of the advance.

It should also be noticed that no opinion is expressed upon the reasonableness of the advances from Cairo to Cedar Rapids and other points west of the Mississippi River which went into effect on October 1, 1908, subsequent to the filing of this complaint.

15 I. C. C. Rep.

No. 1547.

PERCY KENT COMPANY ET AL.

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD  
COMPANY ET AL.

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*Submitted February 6, 1909. Decided March 1, 1909.*

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Defendants' rates for the transportation of burlap bags from New York to Chicago and other points in Central Freight Association territory, not found unreasonable; neither can the Commission, under the peculiar circumstances of the case, take action condemning the relation between the rates upon such burlap bags and upon the burlaps. *Pittsburg Plate Glass Co. v. P., C., & St. L. Ry. Co. et al.*, 13 I. C. O Rep., 87, cited and followed.

*F. S. Bright and Cormstock & Washburn* for complainants.

*Clyde Brown and Edgar H. Boles* for New York Central & Hudson River Railroad Company and Baltimore & Ohio Railroad Company.

*Henry Wolf Biele and George Stuart Patterson* for Pennsylvania Railroad Company.

*John L. Seager* for Delaware, Lackawanna & Western Railroad Company.

*Herbert A. Taylor* for Erie Railroad Company.

#### REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainants are manufacturers of burlap bags, located in the city of New York and vicinity, and their complaint is directed against the rates maintained by the defendants for the transportation of their product from New York to Chicago and other points in Central Freight Association territory.

The burlaps from which burlap bags are manufactured are not produced in the United States, but are imported in large quantities from Scotland and India. They are handled in bales weighing on the average about 1,200 pounds and having a cubical capacity of about 22 feet. The value of the burlaps is from \$6 to \$7 per 100 pounds, and the process of manufacture into bags adds from 3 per cent to 8 per cent to that value.

15 I. C. C. Rep.

The manufactured bags are also transported in bales which are somewhat smaller and considerably less dense than those in which the burlaps come. The present minimum carload weight applied to both burlaps and burlap bags is 30,000 pounds. The complainants testified that burlap bags could be loaded in excess of this minimum, but that, owing to commercial reasons, the minimum carload weight ought not, in their opinion, to be increased. Burlaps load considerably heavier than the bags, and there is no commercial reason why cars can not be loaded to their physical capacity.

Burlap bags are used by flour and feed mills, fertilizer factories, sugar refineries, salt works, etc. Their use extends to all parts of the United States, but is greatest in territory east of the Missouri and north of the Potomac and Ohio rivers. They are frequently shipped in carloads, the testimony tending to show that about one-half the total consumption could be delivered in lots of 30,000 pounds and over.

Under Official Classification both burlaps and burlap bags are classified as third class in less than carloads and fourth class in carloads, which results in rates from New York to Chicago of 35 cents, C. L., and 48 cents, L. C. L. The inland portion of the import rate from New York to Chicago upon burlaps is 18 cents.

The first contention of the complainants is that the rate on burlap bags is too high. The present classification and rates have been in force for many years. Cotton bagging is about twice as valuable as burlap and moves under the second class rate. The value of a carload of burlap bags weighing 30,000 pounds is approximately \$2,300. We do not feel that it is unreasonable to impose for the transportation of this carload from New York to Chicago a charge of \$105. The first claim of the complainants is not sustained.

The real grievance of the complainants is not against the rate on burlap bags, but rather against the difference between the rate upon the bags and that upon the burlaps. The complainants manufacture these bags in New York and they desire to sell them in the middle west in competition with manufacturers at Cleveland, Chicago, and similar points. The western manufacturer pays 18 cents per 100 pounds upon his raw material, while the complainants pay 35 cents upon the finished product, although the process of manufacture adds, on the average, not over 5 per cent of the value of the raw material. When it is remembered that the value of burlaps is from \$6 to \$7 per 100 pounds and that 2 per cent upon the value is regarded as a liberal profit to the manufacturer, it will readily be appreciated that this difference in the freight rate renders it well-nigh impossible for the complainants to operate in the middle west.

The testimony shows that formerly these firms did a very considerable business throughout all that territory, going as far west as the Missouri River, but that to-day their sales west of the Buffalo-Pittsburg line are extremely limited. While, however, their business in the west has fallen off, their business, as a whole, seems to be in a most thriving condition. One witness represented a factory which had recently located at Jersey City, and which had already developed an extensive trade.

It should be noted that to establish the same rate from the port of import to interior points upon both burlaps and the manufactured bags would be to decree that such bags should be made at the seaboard. The manufacturer at the port would be able to lay down a carload of bags in Chicago for exactly the same freight rate that his competitor could obtain a carload containing the same number of pounds of burlaps. The seaboard manufacturer would have, upon all carload shipments, as compared with the western dealer, the advantage of the local rate from the western point of manufacture to the point of delivery. Upon less than carload shipments the freight charges would be the same at all points to which the L. C. L. rate equaled the sum of the carload rate to the western point plus the local rate out.

It was conceded that the value of burlaps was somewhat less and that the loading might be somewhat heavier than that of bags. It is plain that the rate upon the bags ought to be somewhat higher than upon the burlaps, but there is no theory upon which the carriers could justly establish and this Commission approve a rate upon burlap bags twice as great as that upon the raw product. The defendants themselves admitted that this relation ought not to exist, and stated that their action in maintaining it is justified by competitive conditions which they do not and can not control. The real question for decision is whether, under the circumstances, this preference is undue.

Burlaps may move from the foreign point of origin to the interior destination like Chicago by many different routes. They may come in through Montreal and the Canadian lines or through one of the Atlantic ports or through the Gulf. The import rate on burlaps to-day to Chicago is 12 cents from New Orleans, 15 cents from Montreal, and 16 cents from Boston. The nature of the commodity is such that the cheapest rate ordinarily determines what route shall be taken. This creates a highly competitive condition, which is undoubtedly responsible for the low rate upon burlaps.

There are two ways in which this discrimination might be removed. First, the rate upon the bags might be reduced, but it would be unjust to compel these defendants to receive less than a reasonable charge for the transportation of that commodity.



Second, the rates on the burlaps might be advanced, but the Commission has no authority to prescribe a minimum rate. We have considered carefully the advisability of requiring all lines to maintain a certain relation between the rate upon the bagging and that upon the bags, but the immediate effect of this would be to induce lines leading from ports where bags are manufactured to withdraw from the transportation of the bagging, which might be unjust to the railroad and to the port.

The situation presented by this record is very much like that developed in *Pittsburg Plate Glass Co. v. P., C., C. & St. L. Ry. Co. et al.*, 13 I. C. C. Rep., 87. Our conclusion in that case was that the Commission should take no action, and such is the conclusion to which we come here. While a case might possibly arise in which it would be the duty of the carrier to protect an industry against a low import rate by somewhat reducing its otherwise reasonable domestic rate, such is not this record.

The complaint will be dismissed.

15 I. C. C. Rep.

No. 1637.  
WEST TEXAS FUEL COMPANY  
v.  
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

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*Submitted February 15, 1909. Decided March 1, 1909.*

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1. A car of coal transported from Gallup, N. Mex., to El Paso, Tex., by one carrier, and delivered by that carrier to a second carrier for delivery to warehouse of consignee located upon the tracks of such second carrier in El Paso, is interstate traffic, even though the first carrier collects only its transportation charge to El Paso and the second carrier collects and retains all of the switching charge at El Paso.
2. A switching charge of \$5 per car found to be unreasonable and a charge of \$3 per car prescribed. Reparation denied because complaint not filed within two years from time cause of action accrued.

*Rufus B. Daniel* for complainant.

*R. W. Curtis* for Texas & Pacific Railway Company.

*A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

The complaint in this case attacks the reasonableness of a switching charge of \$5 per car exacted by the defendants at El Paso between the terminal of defendant, the Atchison, Topeka & Santa Fe Railway Company, and the complainant's place of business, which is located upon the tracks of the defendant, the Texas & Pacific Railway, and alleges that a just and reasonable charge for such transportation should not exceed \$2.50 per car. The prayer is that the Commission establish a just and reasonable switching charge for the future and that it award reparation in the sum of \$2.50 on shipment of one car of coal from Gallup, N. Mex., to El Paso, Tex., "or such other sum as, in view of the evidence adduced herein, the Commission may consider complainant entitled to." It is alleged in the complaint that said car of coal was shipped from Gallup, N. Mex., on or about July 7, 1906, and delivered to the complainant on or about July 11, 1906. The complaint was filed July 11, 1908. No evidence

15 I. C. C. Rep.

was submitted in further relation to the date upon which this shipment was delivered to the complainant, and, therefore, we must assume that date to be correct, and, in the absence of other information, we must assume that the charges were paid upon delivery of the shipment.

Defendant, the Texas & Pacific Railway Company, denies that the switching rate is unjust or unreasonable, considering the circumstances which surrounded the movement. Defendant, the Atchison, Topeka & Santa Fe Railway Company, states that it has no information as to the averments in reference to the shipment and the unreasonableness of the charge, and avers that the claim is barred by limitation and the Commission is without jurisdiction to grant the relief prayed.

Section 16 of the act provides that:

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after.

In interpreting this provision the Commission has held that claims filed since August 28, 1907, must have accrued within two years immediately prior to the date upon which they are filed; otherwise they are barred by the statute. It appears, therefore, that this claim for reparation is barred, the cause of action having accrued more than two years prior to the time of filing the complaint. The only testimony offered with relation to reparation on past shipments is that of one witness, who stated that he thought complainant was entitled to it. Such a statement of opinion on part of a single witness is too vague, uncertain, and indefinite to fix any liability for reparation upon defendants.

The principal question in the complaint, however, is the alleged unreasonableness of the switching charge.

It appears that the Santa Fe establishes the rates on coal from Gallup to El Paso, which rates include delivery only on its tracks in El Paso, and that on coal from Gallup consigned to the West Texas Fuel Company the Santa Fe receives only its freight rates and no portion of the switching charge.

When a car comes in consigned to the West Texas Fuel Company the Santa Fe notifies the consignee, and, upon receiving instructions from consignee so to do, switches the car about one-half mile to the exchange track which is owned by the Texas & Pacific. The Santa Fe thereupon issues a transfer bill to the Texas & Pacific for such car and advises the Texas & Pacific as to who is consignee of same. The Texas & Pacific thereupon, and without any instructions from consignee, switches the car from the exchange track to the consignee's warehouse. The Texas & Pacific Railway collects and retains the switching charge, and the Santa Fe collects the freight

rate from the mine to El Paso. Two expense bills rendered by the Texas & Pacific Company to complainant for switching service are in evidence. One reads "Switching on car coal from Santa Fe, interstate, \$5." In the other the word "interstate" is omitted, and the charge is \$1.50.

As the complainant's brief argues against the jurisdiction of the Commission, and defendant, the Santa Fe, avers in its answer that the Commission is without jurisdiction, the case must hinge upon the determination of that question. The principal defendant, the Texas & Pacific Railway Company, filed no brief in the case and we are therefore without light from it on this point. It is, however, noted both from its testimony and its bills and charges that it considers and treats the service as interstate.

Complainant contends that inasmuch as the Santa Fe collects all freight charges on shipments from Gallup, N. Mex., to El Paso, Tex., that such freight charges include only delivery on the rails of the Santa Fe; that the Texas & Pacific contracts with complainant for the charge for carrying from the Santa Fe tracks to the warehouse of complainant; that contract for such charge is made by the Texas & Pacific after the Santa Fe has effected delivery on its own rails, and switching in El Paso by the Texas & Pacific is therefore independent and entirely intrastate, citing as principal authority for that argument the decision of the Supreme Court of the United States in *Gulf, Colorado & Santa Fe Ry. v. Texas*, 204, U. S., 412. All parties to this case have joined in an agreed statement of the details of the manner in which these shipments are handled and in which they reach complainant's warehouse. As has already been stated, complainant gives directions to the Santa Fe and no directions to the Texas & Pacific. It therefore makes no contract or arrangement of any kind with the Texas & Pacific for a separate or intrastate movement. Its signed stipulation of facts contradicts its argument.

Witness Brown for the Santa Fe stated that his company would not accept a bill of lading for coal to the West Texas Fuel Company for Texas & Pacific delivery because it could not accomplish the service over its rails, having no tariff provision therefor. Santa Fe System Circular, I. C. C. No. 3761, provides: "Switching charges from and to industries located on foreign lines at El Paso, Tex.," among which appears: "West Texas Fuel Company, from or to T. & P.: State, \$1.50; interstate, \$5." Supplement No. 9 to Texas & Pacific tariff, I. C. C. No. 940, names a charge of \$5 per car on interstate traffic between Santa Fe track connections with Texas & Pacific Railway in El Paso, Tex., and industries located on Texas & Pacific Railway in El Paso, Tex.

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The Supreme Court of the United States decided in the so-called "Goldthwaite case," cited above, that the interstate shipment on reaching point specified in the original contract of transportation and passing into the possession and custody of the owner or consignee ceased to be an interstate shipment, and its subsequent and further transportation within the same state, on the subsequent order of the consignee, was controlled by the law of the state and not by the act to regulate commerce. We have here no such facts. Here the shipment moves from Gallup, N. Mex., to complainant's warehouse in El Paso, Tex., over the lines of the two defendants without passing into the possession of the owner or consignee and without any reconsignment or contract for further transportation. The only difference between billing direct from point of origin for Texas & Pacific delivery and what is here done is that here the Santa Fe gets instructions for each car after arrival and each defendant collects and retains its own charges for the service which it renders. Both of them have in their interstate tariffs provisions and charges for the switching service. Manifestly here the shipment does not lose its interstate character. It is an interstate shipment from the time it leaves the mines at Gallup, N. Mex., until it is delivered at the warehouse of the complainant in El Paso, Tex. *McNeill v. Southern Ry. Co.*, 202 U. S., 543.

Complainant is engaged at El Paso in the feed and fuel business and its warehouse is located upon the tracks of the Texas & Pacific Railway. The spur to this warehouse will hold but two cars, and but one at a time can be placed so as to be unloaded. The distance from the tracks of the Santa Fe to this warehouse is about one mile and the grade is very slight. Complainant could have located on the Santa Fe tracks, and, if he had done so, would have had to pay no switching, but believing that the switching rate would remain \$1.50 and because there was no other business of the same kind thereon, he located on the Texas & Pacific track. Complainant gets his coal and hay from New Mexico points located exclusively on the Santa Fe, because the Gallup coal fields produce the kind of coal demanded by his trade. The Texas & Pacific transports some coal, but is not considered as a competitive coal-carrying road, and practically the only revenue it receives on said traffic is for switching. The hay which complainant sells also comes in over the Santa Fe, but instead of having it all switched by the Texas & Pacific one-half of it is teamed by complainant from Santa Fe delivery. Complainant has about 75 cars of hay and 100 cars of coal switched in a year.

The railroad commission of the state of Texas, by its circular No. 1314, established switching charges of \$1.50, \$2, and \$2.50 for 1 mile

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and less, 2 miles and over 1 mile, and over 2 miles, respectively. When complainant first began business the switching charge on non-competitive interstate traffic was \$1.50 per car, and the great bulk of the testimony is directed against the alleged unreasonableness of the \$5 charge as compared with the charge so fixed by that commission.

The service of switching is defined to include the movement of a car loaded in one direction and empty in the opposite direction; but when a loaded car is switched in both directions a switching charge is made for each movement. The record contains some expressions of estimates or guesses of both complainant and defendants as to the cost and profit in switching service, but they are not illuminating or convincing.

Complainant submits in evidence a statement of switching charges in the state of Texas taken from Santa Fe Tariff, I. C. C. No. 3761, which shows that in over 30 cities in Texas the maximum switching charge is \$2.50.

Comparison was made with the switching rates of \$2 per car charged in El Paso by these defendants to the El Paso smelter and of \$3 per car charged on noncompetitive interstate traffic to fuel dealers located on the El Paso Southwestern tracks in El Paso, and who receive their coal from the same points of origin as does this complainant.

It appears that switching to and from the El Paso smelter is difficult because of adverse grade and sharp curve, necessitating 2 engines to handle a small number of cars. The volume of such switching for this smelter is much larger than that done for complainant herein, and, hence, it can be done at a less cost per car. The service of switching a car of coal from the Santa Fe terminal to complainant's warehouse does not differ in substance or to an important degree from that of switching the same car to a warehouse on the El Paso Southwestern tracks. As has been seen, the carrier's charges for switching to the smelter are \$2 per car, and to the El Paso Southwestern delivery \$3 per car.

Measured by the cost and value of the service, by the rates prescribed by the Texas commission, by the rates charged to the El Paso smelter, by the rates charged for El Paso Southwestern delivery, by the switching rates of defendants in other Texas cities, or by the rates accepted by defendants for the same service on an intrastate shipment, the charge of \$5 per car charged complainant herein by defendant Texas & Pacific Railway Company for switching from the Santa Fe terminal or exchange track to complainant's warehouse is unreasonable and unjust, and we so find. We also find that \$3 per

car is and for the future will be a just and reasonable charge for said service.

The charge for switching to complainant's warehouse is the same in the tariffs of the Texas and Pacific and the Santa Fe, and, of course, what has been said applies alike and with equal force to both defendants. The Santa Fe, however, does not perform the switching service complained of, and therefore our order will be directed only against the Texas and Pacific; it being assumed that the Santa Fe will correct its tariffs.

An order will be entered accordingly.

15 I. C. C. Rep.

No. 1686.

MOSE SMITH &amp; COMPANY

v.

MISSOURI & NORTH ARKANSAS RAILROAD COMPANY  
ET AL.

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*Submitted February 23, 1909. Decided March 2, 1909.*

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Complainant shipped carload of eggs from Leslie, Ark., to Chicago, Ill. Defendants' rate, as applied to this traffic, was (third class) \$1.10 per 100 pounds. Subsequent to the shipment in question, defendants established a special commodity rate of 77½ cents per 100 pounds on butter, eggs, dressed poultry from Leslie to Chicago; Held, That the rate applied was unjust and unreasonable. Reparation awarded.

*Mose Smith & Company* for complainant.

*R. M. Warner* for Missouri & North Arkansas Railroad Company.

*E. B. Peirce* for St. Louis & San Francisco Railroad Company and Chicago & Eastern Illinois Railroad Company.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This is a complaint seeking reparation on the basis of alleged excessive and unreasonable charges on a carload shipment of eggs, weighing 23,900 pounds, from Leslie, Ark., to Chicago, Ill., March 15, 1907. There was no through commodity rate in effect at this time, and under the Western Classification eggs were placed in third class, the rate applicable to which was \$1.10 per 100 pounds, but effective April 6, 1907, the defendant carriers established a special commodity rate on butter, eggs, and dressed poultry, minimum weight 20,000 pounds, from Leslie, Ark., to Chicago, Ill., of 77½ cents per 100 pounds, which rate is still in effect.

There is no dispute about the facts, and while the defendants, in their answer, have stated that the rate charged, being in accordance with their published tariff at the time of the shipment, was the only lawful rate which could be applied to the shipment, and deny their liability for reparation, they have, by stipulation in correspondence with the Commission, signified their willingness for the continuation of the special commodity rate, above named, by order of the Commission,



for a period of two years; and also to pay reparation on the basis of the last-named rate if, in the judgment of the Commission, this should be done and may lawfully be done. The case has been submitted to the Commission upon complaint and answers and correspondence in relation thereto, including that pertaining to prior informal complaint respecting the same matter.

We find by reference to the rate schedules that there are in effect on carload shipments of eggs, 20,000 pounds minimum, the following commodity rates in cents per 100 pounds from Arkansas points to Chicago:

*Commodity rates from Arkansas points to Chicago.*

	Miles.	Rate per 100 pounds.
		Cents.
Little Rock.....	629	57
Pine Bluff.....	672	57
Fort Smith.....	700	67
Van Buren.....	695	67

The distance from Leslie, Ark., to Chicago, Ill., is 728 miles.

It does not follow that where a carrier reduces a rate that shippers, for that reason alone, are entitled to reparation on shipments moving prior to such reduction. It is the opinion of the Commission, however, that the rate charged on this shipment was unreasonable and unjust. It is our conclusion that the complainant is entitled to reparation in the amount of \$77.67, which is the difference between the rate paid and that subsequently established and now in effect, and that the last-named rate should be continued as the maximum rate to be charged in future for the period prescribed by the statute. An order will be entered to this effect.

15 I. C. C. Rep.

No. 1938.

DARBYSHIRE-HARVIE IRON & MACHINE COMPANY  
v.  
EL PASO & SOUTHWESTERN RAILROAD COMPANY.

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*Submitted January 18, 1909. Decided March 2, 1909.*

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Rate of 63 cents per 100 pounds on carload shipments of scrap iron from Douglas, Ariz., to El Paso, Tex., via El Paso & Southwestern Railroad Company, found to be unreasonable, and rate of \$3.50 per net ton prescribed as maximum. Reparation awarded.

*Rufus B. Daniel* for complainant.

*Holcomb & Keegin* and *Hawkins & Franklin* for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complaint avers that defendant's rate of 63 cents per 100 pounds for the transportation of scrap iron in carloads from Douglas, Ariz., to El Paso, Tex., is unreasonable, and that on or about March 9, 1907, complainant shipped a carload thereof weighing 77,000 pounds from said point of origin to said destination, for which defendant collected of complainant said rate of 63 cents per 100 pounds, aggregating \$485.10. The prayer is for the establishment of a just and reasonable rate and for reparation on account of such alleged unreasonable charge on the shipment mentioned. It is asserted in the complaint that \$2.72 per net ton would be a reasonable rate.

There is no dispute as to the facts. It appears from the pleadings and a written stipulation between the parties that the said shipment was made and that charges thereon were exacted and paid as above stated; that prior to this shipment there had been no demand for movement of such material from Douglas to El Paso, and that on account of the lack of demand for rates upon such freight the defendant had no commodity rate in effect at the time of this shipment. Therefore, the only rate that could lawfully be applied was the class rate of 63 cents per 100 pounds then in effect.

The distance from Douglas to El Paso by the defendant's line is 217 miles. It is conceded by the defendant in the stipulation referred  
15 I. C. C. Rep.

to that the class rate applied to this shipment was and is excessive, and by complainant and defendant that \$3.50 per ton of 2,000 pounds would be a just and reasonable rate.

Upon the facts appearing it is the view of the Commission that the rate charged on this shipment was unreasonable and excessive and therefore unlawful. While \$3.50 per net ton for the haul involved appears by comparison with rates on other lines in the same territory to be rather a liberal rate, the Commission has not before it any basis for prescribing a maximum future rate less in amount; and since this proposed rate is greatly less than that charged and now in effect and the circumstances do not indicate the necessity for further investigation at this time with a view to determining whether in the public interest the maximum rate for the future should be less than that stipulated between the parties, we will fix that rate as the maximum to be charged in the future for the time prescribed by the statute, and as applicable to minimum carloads of 50,000 pounds. This minimum weight on the commodity in question appears to be in use in that territory by lines operating under the Western Classification, except where by special provisions some other rule has been adopted. Reparation will accordingly be awarded complainant in the sum of \$350.35, this sum representing the difference in charges, based on the class rate collected and the rate of \$3.50 per net ton hereby established. An order will be entered accordingly.

15 I. C. C. Rep.

No. 1297.

BOARD OF MAYOR & ALDERMEN OF THE CITY OF  
BRISTOL, TENN.,

v.

VIRGINIA & SOUTHWESTERN RAILWAY COMPANY  
ET AL.

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Submitted June 10, 1908. Decided March 1, 1909.

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1. While evidence of unlawful combinations is always admissible as part of the history of the rate of which complaint is made, and may often throw light upon the question of its reasonableness, the unlawful combination, standing by itself, without proof also of the unreasonableness of the rate, is not a sufficient ground for an order reducing the rate.
2. Complainant's contention that the rate here involved is discriminatory as compared with the rates of one of the defendants from Middlesboro to Knoxville is not sustained, as the circumstances surrounding the shipments from Middlesboro are dissimilar.
3. Under all the circumstances shown of record the flat rate of 85 cents per ton for the transportation of both steam and domestic coal from the Appalachia coal field in Virginia to Bristol, Tenn., is unreasonable. The rate of 75 cents per ton will yield a fair and reasonable compensation.

*A. B. Whiteaker* and *E. K. Bachman* for complainant.

*St. John & Shelton, Bullitt & Kelly*, and *D. D. Hull, jr.*, for  
Virginia & Southwestern Railway Company.

*Claudian B. Northrop* for Southern Railway Company.

## REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The boundary line that separates the state of Virginia from the state of Tennessee is also the center of the main street of Bristol. This fact materially affects the extent of the relief that the community as a whole may properly demand at the hands of this Commission, for the rates on bituminous coal from the Appalachia coal field in Virginia, which are here alleged to be excessive, are state rates when the coal is for delivery on one side of the street and interstate rates when destined to the other side of the street.

15 I. C. C. Rep.

Bristol is organized under two municipal corporations, one chartered under the laws of Virginia and the other under the laws of Tennessee. The freight depot and yards of the principal defendant as well as the larger number of the coal consuming industries of the community are on the Virginia side of the boundary line. The Tennessee side is set apart largely for residences, although there are a few coal-consuming plants on that side also. The rates are the same to both sides. Under the coal tariff of the principal defendant the rates are named to "Bristol, Va.-Tenn." When the coal is destined for Virginia delivery, the bill of lading and waybill are marked "Bristol, Va," and such shipments, as well as the rates that apply to them, being between points in the same state, are beyond the control of this body. When the coal is destined for delivery across the street to industries having sidings in that part of Bristol that lies in the state of Tennessee, the shipping papers are so marked and the delivery is made in the adjoining state, the switching charges being absorbed by the defendant. These shipments are interstate and the rates under which they move fall under the jurisdiction of this Commission. Of the coal reaching Bristol from the Appalachia field in past years about 85½ per cent has been shipped for delivery on the Virginia side, leaving ordinarily only about 14½ per cent of the tonnage that is interstate and that may be directly affected by any order that this Commission is competent to enter herein. The proceeding, as will be observed, is brought in the name of the Tennessee municipality.

There are three preliminary questions that may well be disposed of before taking up the substantial point in the controversy:

1. The right to pursue the complaint in the name of the petitioner is questioned because of some expressions, more or less official in character, that were made by city aldermen and others after the proceeding was instituted. The point, however, is without merit. No motion has been made by the municipality to discontinue its complaint; the city attorney appeared in its behalf on the argument; and so far as we have been advised the Tennessee municipality is still before us as a party complainant pressing the issue that it has made in the interest of coal consumers within its boundaries.

2. It is contended by the complainant that the rates now attacked, as well as the previous higher rates, resulted from unlawful agreements and combinations among the defendants. That may be true. But while evidence of such unlawful combinations is always admissible as a part of the history of the rate of which complaint is made, and may often throw light upon the question of its reasonableness, the unlawful combination, standing by itself without proof also of the unreasonableness of the rate, is not a sufficient ground for an order by the Commission reducing the rate. Under the act to regulate

commerce as amended there are but two grounds upon which a rate may be condemned: (a) It may be unreasonable and excessive. (b) It may be discriminatory. The fact that a rate may be fixed in fulfillment of an unlawful agreement and combination between carriers does not necessarily imply that it is subject to either of those criticisms. The rate so unlawfully agreed upon is unlawful, so far as the regulating power of the Commission is concerned, only when upon complaint made and hearing had it is found to be excessive or discriminatory.

3. It is contended also by the complainant that the rate here involved is discriminatory as compared with the rates of the defendant, the Southern Railway, of 50 cents and 70 cents per ton, respectively, on coal shipped for steam and domestic purposes from Middlesboro to Knoxville, a haul of 69 miles, the haul from Appalachia to Bristol being 69½ miles. The record discloses, however, that the rate from Middlesboro to Knoxville is largely controlled by the competition of coal mines at Coal Creek, 31 miles distant from Knoxville, from which the state commission has fixed rates to Knoxville of 40 cents and 60 cents, respectively, on steam and domestic coal. We therefore discard that contention in the further examination of the record.

There is left for consideration only the question of the reasonableness *per se* of the rates of which complaint is made. Their history, so far as is material to this inquiry, is as follows: On September 15, 1897, the South Atlantic & Ohio Railroad, extending from Bristol to Appalachia, put in effect between those points a flat rate of 75 cents a ton on coal intended either for steam or domestic purposes. It is not improbable that this rate had been in effect for some time prior to that date, but the facts in that regard do not appear of record. It remained in effect until March 23, 1899, when the principal defendant, which in February of that year had acquired the South Atlantic & Ohio Railroad, reduced the rate on coal intended for domestic use to 60 cents a ton, leaving untouched the 75-cent rate on steam coal. On September 1 of the same year the defendant increased the rate on domestic coal to 90 cents and reduced the rate on coal intended for steam purposes to 70 cents a ton. These rates remained in effect until September 3, 1900, when the defendant changed the rate on steam coal to \$1.05 and on domestic coal to \$1.25 a ton. No further changes were made until December 19, 1904, when the rate on domestic coal was reduced to \$1.05, making a flat rate into Bristol without regard to the use to which the coal was to be put. On July 1, 1905, the rate on steam coal was reduced to 80 cents a ton, no change being made at that time in the rate of \$1.05 on domestic coal.

Such was the rate situation when the complaint was filed, and when the record was made those rates were still in effect. They were

also in force when the case was argued. But at about that time the Commission, after due consideration of the question, which had been presented to it from different quarters, announced its ruling to the effect that the character of the consignee or the use made of the coal is not a proper or lawful basis for a difference in rates on coal of the same kind. *Conference Ruling 34, Bulletin No. 1.* It was doubtless with a desire to comply with this ruling that the defendant, on July 5, 1908, established a flat rate of 85 cents a ton on coal from Appalachia to Bristol, whether consigned there for steam purposes or for domestic use. While this involved a reduction of 20 cents in the rate on domestic coal, it also involved an increase of 5 cents per ton in the rate on steam coal. As four-fifths of the coal carried by the defendant into Bristol is used for steam purposes the readjustment was doubtless based on the theory that under the flat rate of 85 cents it would receive as much revenue as it had under the previous rates of 80 cents on steam coal and \$1.05 on domestic coal.

The only question therefore now before the Commission is whether the present rate of 85 cents per ton is in and of itself a reasonable rate. The complainant in its petition, filed before the conference ruling referred to was announced, demands rates of 70 cents per ton on domestic coal and 50 cents per ton on coal for steam purposes. In support of its contention the financial history of the Virginia & Southwestern was brought out at some length in the record. Summarizing the evidence on that point, it appears that a syndicate having some relation to the Virginia Iron, Coal & Coke Company, which has a large plant at Bristol, purchased the South Atlantic & Ohio Railroad in 1899. The line was 69.5 miles in length and extended through a rough and mountainous country from Bristol to Appalachia. It is said to have cost in the neighborhood of \$2,000,000, but it was acquired by the syndicate in question under foreclosure proceedings for the sum of \$450,000. The same syndicate, or persons representing the same general interests, also acquired at foreclosure, and for the sum of \$185,000, a line extending from Bristol southward 22 miles to Elizabethtown, in the state of Tennessee, formerly known as the Bristol, Elizabethton & North Carolina Railway. The Virginia & Southwestern Railroad Company was then incorporated in the state of Virginia, with a capital stock of \$2,000,000, and in the reorganization the two roads referred to became the present Virginia & Southwestern Railroad. This company issued \$2,000,000 worth of bonds, guaranteed by the Virginia Iron, Coal & Coke Company. Apparently the fund thus raised was sufficient to finance the reorganized road, for the 20,000 shares of stock, of the par value of \$100 each, were given as a bonus to the purchasers of the bonds. Subsequently the Virginia & Southwestern took over the Black

Mountain Railroad, extending from Appalachia northward to Black Mountain. Apparently other mileage was acquired or newly constructed by the principal defendant, for the system is now said to embrace 208.71 miles. It is also said that its present bonded indebtedness is in excess of \$4,500,000.

While it is true that the Virginia & Southwestern has not paid any dividends since it was incorporated in 1899, there has been a rapid increase in the value of its stock, due apparently to its increased traffic and to the fact that its earnings were put back into the property and used in the purchase of equipment and for other purposes. A significant fact disclosed of record is that when the road was recently sold by the Virginia Iron, Coal & Coke Company to the Southern Railway Company the price paid for the stock was \$200 a share. Although, as stated, no dividend has been paid during the 10 years since the company was organized, the sale of the stock at \$200 per share would seem to indicate that the road is regarded as having a substantial earning power. The sale at that price also yielded a substantial reward upon the investment of the former holders who secured the stock for nothing and as a bonus for their purchase of the bonds of the company.

The rapid increase of the net earnings of the company doubtless explains the high price paid by the Southern Railway Company for its stock. At the time the Virginia & Southwestern was organized it had very little traffic except into Bristol, then a town of modest size. Since that time Bristol has attained a position of importance in that territory. Its population and its business enterprises have largely increased. And the earnings of the Virginia & Southwestern have kept pace with the growth of the community. From net earnings of less than \$8,000 in 1899, its revenues steadily and rapidly increased to a point where in 1906 its net earnings were nearly \$249,000. There was a falling off during the period of commercial contraction in 1907 so that the net earnings for that year aggregated only \$175,000. The record before us does not show its total tonnage from 1899, but starting with a total traffic of 437,000 tons during the year 1901, it reached a total of 1,253,000 tons during the year 1907. During the same period its coal traffic increased from 85,000 to 453,000 tons, and its coal tonnage into Bristol increased from 18,000 tons to 86,000 tons. Although a portion of its increased earnings and large general tonnage is due to construction work on another railroad that will presently be completed, it can not be doubted that the Virginia & Southwestern is now firmly established and must be regarded as a fairly profitable enterprise. While the operating expenses of the defendant have doubtless increased since the date of its organization, because of a general increase in



the cost of railway labor and supplies, we are of the opinion, in view of all the facts shown of record, that we may nevertheless approach the consideration of the rate question without fear that the reduction which we think should be made in the rate on coal into Bristol from Appalachia and adjoining mines will impair a fair return upon the investment.

Upon the whole record we think that the present rate of 85 cents per ton is excessive and unreasonable, and that a flat rate of 75 cents per ton would be a reasonable and fairly remunerative rate at this time and ought not to be exceeded for the future. When the defendant reorganized its underlying companies in 1899, it found in effect a published rate on coal of 75 cents a net ton that had been in effect for some years and which may therefore fairly be assumed to have been a normal rate at that time. It at once reduced the rate on steam coal, which embraced four-fifths of the movement, to 70 cents a ton and kept that rate in force for over a year. So far as we are advised these were voluntary rates, and we may presume them also to have been remunerative. If so, nothing in the present condition of the finances of the defendant, or in the volume of its traffic, or in the cost of its operations, so far as any facts in that behalf are disclosed of record, suggests the need of a higher rate now than the 75-cent rate in effect ten years ago. It is true that there are some very severe grades on the line of the Virginia & Southwestern; but that was as true before it passed under the control of the Southern Railway Company and when the 75-cent rate was in effect, as it is now. Since that time there has been a rapid growth in the through traffic passing over the line. The statistics are not now available, but it is conceded that the Virginia & Southwestern annually hauls a large tonnage of coal from the Appalachia field and from the Toms Creek and Black Mountain districts through Bristol and 11 miles beyond to Bluff City, where it has a junction with the Southern Railway, by which line the coal is carried to destinations in the southeast. For its haul to Bluff City, 11 miles longer than its haul from the Appalachia field to Bristol, the principal defendant, when operated altogether as an independent line, received a division of from 50 to 60 cents a ton. It now admits, and in the record in *Black Mountain Coal Land Co. v. Southern Ry. Co. et al.*, 15 I. C. C. Rep. 286, it also admitted that its divisions of the through rates gave it a profit. This fact at least raises a presumption that its present local rate of 85 cents for the shorter haul to Bristol yields it a substantial profit, and that a local rate of 75 cents per ton would yield it an entirely reasonable profit.

In this connection it will be proper to say that in arriving at the conclusion that 75 cents a ton would be reasonable compensation for the haul to Bristol, we attach no importance whatever to the fact that

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the stock of this company was given away as a bonus to the purchasers of its bonds. Assuming, however, that the bonds and stock at their par value together fairly represented the value of the investment, the subsequent sale of the stock at \$200 a share is not without some significance as to the earning power of the road. But we base our conclusions more largely upon the general facts shown of record. In this connection it may be well to call attention to the fact that the Virginia & Southwestern, at about the time it was sold to the Southern Railway Company by the Virginia Iron, Coal & Coke Company, put in effect a rate, which it still maintains, of 45 cents a ton on coke from Appalachia to Bristol when intended for furnace use, although the tariff states that when the coke is intended "for other use" the rate shall be \$1.05 a ton. While it appears that this rate was approved by the state commission of Virginia and is available only for Virginia delivery at Bristol, our understanding is that it was for all practical purposes a voluntary rate, having been proposed for approval by the Virginia & Southwestern. Moreover, when the coke originates at Stonega, the company receives out of that through rate only 35 cents for its haul from Appalachia to Bristol. Coke has ordinarily a greater value than the coal from which it is made and ordinarily moves at a higher rate, and if not, at least on an equal rate with the coal. Although it is a state rate, the mere fact that it does not cross a state line is no reason why, being practically a voluntary rate, it may not properly be considered when an interstate rate over the same line and for substantially the same distance is under examination. Certainly if the defendants can haul coke from Appalachia to Bristol for the Virginia Iron, Coal & Coke Company for 45 cents a ton, it can not complain of a rate of 75 cents on coal hauled between the same points for the general public. Although the Virginia & Southwestern runs through a mountainous country, which must add something to the cost of operation, we think under all the circumstances shown of record that the rate of 75 cents will yield it a fair and reasonable compensation.

An order will be entered in accordance with these conclusions.

15 I. C. C. Rep.

No. 1615.

CHAMBER OF COMMERCE OF THE CITY OF MILWAUKEE  
v.  
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
ET AL.

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*Submitted January 21, 1909. Decided March 2, 1909.*

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1. The complainant, and those on whose behalf the petition herein was filed, are entitled to through routes to Milwaukee from the points in question on the lines of that part of the system of the Chicago, Rock Island & Pacific Railway Company that was formerly the Burlington, Cedar Rapids & Northern Railway, and to reasonable joint through rates for the movement over those routes of corn, rye, and oats to the Milwaukee market. The joint through rates on those grains from such points ought not for the future to exceed the through rates on those grains to Chicago.
2. In claiming that as Chicago affords as good a market for grain as does Milwaukee the principal defendant may therefore lawfully so adjust its rate schedules as to force the grain to Chicago, the defendant overlooks the right of the shipper to choose his own market and to do business where he prefers or finds it more advantageous to carry it on. It also overlooks the chief function of a common carrier, which is to carry at reasonable rates the traffic that is tendered to it.
3. A carrier has no right to insist that a shipment shall go to the end of its rails if the shipper desires it to be diverted at an intermediate point to another market off its rails. Nor may a carrier accomplish these results indirectly by any unreasonable adjustment of its rate schedules with that end in view. It can not lawfully compel the shipping public to contribute to its revenues on any such grounds.

*Miller, Mack & Fairchild* for complainant.

*E. B. Peirce and M. L. Bell* for Chicago, Rock Island & Pacific Railway Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The Burlington, Cedar Rapids & Northern Railway Company, at the time of its acquisition by the Chicago, Rock Island & Pacific, was an independent system, about 1,200 miles in length, running through the grain-producing districts of northern Iowa, southwestern Minnesota, and South Dakota. It had no rails of its own into Milwaukee or Chicago, but in connection with the Chicago, Milwaukee

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& St. Paul Railroad Company and the Chicago & North Western it published and maintained joint through rates on grain to both of those points as well as to other primary grain markets. Shortly after the Rock Island gained control of the road in the summer of 1902, all joint grain rates to Milwaukee from its local noncompetitive points were withdrawn except on wheat and barley. The purpose of this proceeding, instituted by the chamber of commerce on behalf of the grain dealers and millers of Milwaukee, is to secure the reopening of the through routes to Milwaukee from local points on the Burlington, Cedar Rapids & Northern and the reestablishment of joint through rates on corn, rye, and oats on the basis of the present rates on those grains to Chicago. It is understood that the defendant, the Chicago, Milwaukee & St. Paul Railroad Company, in connection with which line the through routes and joint rates are desired by the complainant, is entirely willing to join with the Rock Island in making such arrangements, if so directed by the Commission, and that the objection made to the demand of the petitioner is on the part of the Rock Island alone.

Of the great railroads that connect the grain fields in the districts referred to with Chicago, only the Chicago & North Western and the Chicago, Milwaukee & St. Paul have terminals also at Milwaukee. The Illinois Central, the Chicago Great Western, and the Rock Island reach Chicago, but have no rails of their own into Milwaukee. Although the Great Western would doubtless profit by the longer haul of its grain to Chicago, it has nevertheless joined with other carriers in treating Milwaukee as a common point with Chicago. A complaint similar to the one now before us was filed by the petitioners herein at about the same time against the Illinois Central for the purpose of compelling it also to restore the through routes and joint through rates on grain to Milwaukee that had formerly been in effect in connection with its lines. In its answer to the complaint the Illinois Central contested the issue, but it yielded the point before a hearing was had and has now joined with other lines in publishing joint through rates on grain to Milwaukee on the basis of the Chicago rates. *Chamber of Commerce of Milwaukee v. Illinois Central R. R. Co. et al.*, 14 I. C. C. Rep., 640. The Rock Island, therefore, is the only one of these railroad systems that does not make Milwaukee a common point with Chicago in respect to the transportation of coarse grains. Under a general provision in its tariffs it does make Milwaukee a common point with Chicago with respect to traffic moving on class and commodity rates to and from all stations on its lines in Iowa, Minnesota, and South Dakota. Milwaukee is made a common point also with respect to wheat and barley originating on its lines in that territory. It is a common point also with respect to the rates on all grains from

competitive or junction points, as distinguished from local stations, on the Burlington, Cedar Rapids & Northern. But the Rock Island refuses to join with any line reaching Milwaukee in establishing joint through rates to that point on coarse grains produced in its territory and intimates its purpose to withdraw the joint through rates now in effect to Milwaukee on wheat and barley.

Starting at Burlington, in the state of Iowa, the Burlington, Cedar Rapids & Northern Railway, hereinafter referred to for convenience as the Cedar Rapids road, was projected northward through Cedar Rapids and thence to Faribault, in the state of Minnesota. At Vinton, a few miles south of Cedar Rapids, the road branched off through Sibley to Watertown, in South Dakota. Throughout the territory traversed by its main lines were numerous side lines and branches. Besides its terminus at Burlington, the line also reached the Mississippi River at Muscatine, Davenport, and Clinton. It was therefore a more or less extensive system, when absorbed by the Rock Island, and originated a very substantial tonnage of grain and farm products. A glance at the map will show that the territory through which it passed can fairly be said to be tributary to Milwaukee as much if not more than to Chicago. The record shows that when it had joint through rates in effect with other lines a considerable volume of grain reached Milwaukee from points on its rails which, because of the withdrawal of through routes and joint through rates, now goes to Chicago.

The distance to Milwaukee through the nearest junction with the Chicago, Milwaukee & St. Paul is said to be some 70 miles less from the majority of stations on the Cedar Rapids road than the mileage from the same stations to Chicago over the Rock Island line. It appears that the mileage from the great majority of the stations on the Cedar Rapids road when the traffic goes to Milwaukee through Clinton is substantially the same as it is when it goes through Davenport over the Rock Island line to Chicago, the difference against Milwaukee being only 3 miles, which, considering the length of the haul, may be regarded as a negligible quantity. There are other junctions both with the St. Paul road and with other lines that result in shorter hauls to Milwaukee from these points than to Chicago.

The lowest combination of local rates on grain that may now be made to Milwaukee from local points on the Cedar Rapids road is through Chicago, and it makes 3 cents per 100 pounds higher than the Chicago rate. This excess over the Chicago rate is of course prohibitive, and corn, rye, and oats seeking a primary market from local points on that line must necessarily move to Chicago, or to some other Rock Island market. This diversion of their grain trade to Chicago explains the effort here made by the complainant and the grain dealers of Milwaukee to have the previous rate adjustment restored.

The Rock Island justifies its cancellation of the through routes and joint rates to Milwaukee, formerly in effect over the Cedar Rapids road in connection with other roads, and justifies its refusal to reestablish through routes and joint through rates on coarse grains to that market, on several grounds. It is pointed out by its counsel that the Burlington, Cedar Rapids & Northern, which when operated independently did not enjoy the benefit of access over its own rails either to Chicago or to Milwaukee, is now an integral part of the Rock Island system and enjoys all the advantages that that system can give it, among which is that all stations on the line of the Cedar Rapids road now have an immediate connection over the rails of a single carrier with all the great markets served by the Rock Island lines, namely, Chicago, Peoria, Kansas City, St. Louis, Omaha, and the Twin Cities; that every commodity produced on the Cedar Rapids road has a choice of all these principal markets; that the absorption of the Cedar Rapids road by the Rock Island has not impaired the transportation facilities of the local stations on the former road; and that while those stations were formerly on an isolated railroad, surrounded by powerful competitors and dependent on them for an outlet to the great markets, they now have easy access to those markets by a one-line haul. The claim of the Rock Island is that the absorption by it of the Cedar Rapids road gives the enlarged system the right to enjoy the long haul to Chicago over its own rails, and gives it the right, in protection of the revenues of the enlarged system, to so adjust its rates as to force the grain traffic to Chicago and compel its diversion from Milwaukee, regardless of the fact that the owners of the grain for one reason or another prefer the latter market. Counsel for defendant states the thought in this wise:

The very purpose in the acquisition of the Burlington, Cedar Rapids & Northern line was to use it as a feeder to build up the traffic of the country and especially of the Rock Island main line to Chicago. To require us to turn this traffic over to our competitor is not supported either by law or justice.

While this attitude is not one that may fairly be criticised when viewed from the standpoint of those engaged in the effort to produce the best results from the operation of the Rock Island system, it is not consistent with the general duty that carriers owe to the shipping public. We had occasion recently to say, in *Cardiff Coal Co. v. Chicago, Milwaukee & St. Paul Ry. Co.*, 13 I. C. C. Rep., 467, that—

It may be laid down as a general rule admitting of no qualification that a manufacturer or merchant who has traffic to move and is ready to pay a reasonable rate for the service has the right to have it moved and to have reasonable rates established for the movement, regardless of the fact that the revenues of the carrier may be reduced by reason of his competition with other shippers in the distant markets; and under all ordinary conditions he has the right also to have the benefit of through routes and reasonable joint rates to such distant markets if no "reasonable or satisfactory" through routes already exist.

In that case the carrier by canceling its through routes and joint rates with a short connecting line prevented the owners of a coal mine on that line from shipping their coal to local points in the extensive territory served by its own system. It justified this course on the ground that there were mines on its own rails in the same coal district, the output of which was amply sufficient to supply the demands for coal at the distant points on its own lines, and that it therefore had the right, in the protection of its own revenues, to so adjust its rates as to exclude from those markets the coal produced on the connecting line, and by thus eliminating any movement of coal from those mines to secure the revenue arising from the transportation in greater volume of the coal from the mines on its own rails. We declined to recognize its right so to adjust its rates as to exclude the competing coal from the use of its facilities. Here the conditions are reversed. The grain is produced on the lines of the principal defendant, and it declines to establish through routes and reasonable through rates on which it may move to one market because it can earn greater revenues by hauling the traffic entirely over its own rails to another market. Its attitude in the matter amounts in substance to the proposition that it may lawfully deny to grains produced along its lines any access to the Milwaukee market, because it furnishes ample markets on its own rails at Chicago, Peoria, St. Louis, Minneapolis, and at other points reached by it. The claim is that as Chicago affords as good a market for grain as does Milwaukee, the principal defendant may lawfully so adjust its rate schedules as to force the grain to Chicago.

That view of its duty to itself wholly overlooks its duty to the shipper. It overlooks the right of the shipper and dealer in grain to choose his own market and to do business where he prefers or finds it more advantageous to carry it on. It overlooks also the chief function of a common carrier, which is to carry at reasonable rates the traffic that is tendered to it. Cases may arise where the just interests of a carrier may be so affected as to require the application of other principles, but as we understand the general rule of law, an interstate carrier has no right, at least under any ordinary circumstances, to choose or in any way to control the markets in which its shippers may buy or sell their wares. Its duty is to transport the merchandise of shippers in accordance with their reasonable instructions. In general, the carrier may demand of the shipping public nothing beyond a reasonable compensation for the services rendered. It can not force its services upon a shipper or insist upon carrying his shipment to one market when he desires to reach another market. It has no right to insist that a shipment shall go to the end of its rails if the shipper desires it to be diverted at an intermediate point to another market off its rails. Nor may the carrier

accomplish these results indirectly by any unreasonable adjustment of its rate schedules with that end in view. It can not lawfully compel the shipping public to contribute to its revenues on any such grounds.

The complaint presents a state of facts unlike the facts of record in any previous proceeding in which the Commission has been appealed to, under section 15 of the act, to establish through routes and reasonable joint rates between given points, but the principles involved differ in no respect from the principles announced by the Commission in those cases, all of which were cited in argument and have been carefully considered in connection with our examination of the record. It will not be necessary, therefore, to enter here upon a review of the previous adjudications under that provision in the law. It will suffice to say that while the principal defendant asserts that it stands ready, at the local stations in question, to accept corn, rye, and oats for transportation to Milwaukee, it proposes to move such shipments through Chicago and on the sum of the local rates into and out of Chicago. Under such circumstances we do not see how those grains can move to Milwaukee. We therefore find that the situation and rate adjustment now under consideration subject the complainant and its members and grain merchants and dealers in Milwaukee to an unreasonable and undue prejudice and disadvantage and discrimination. We also find that there are no reasonable or satisfactory through routes within the meaning of that part of section 15 of the act to which reference has been made. We further find that the complainant and those on whose behalf the petition was filed are entitled to through routes to Milwaukee from local noncompetitive points on the lines of that part of the system of the principal defendant that was formerly the Burlington, Cedar Rapids & Northern Railway, and to reasonable joint through rates for the movement over those routes of corn, rye, and oats to the Milwaukee markets.

What, then, are reasonable rates on those grains to Milwaukee? As we understand the argument made on behalf of the principal defendant, its contention is that, in establishing joint through rates on grains from its local noncompetitive stations to Milwaukee through junctions with other lines, the Commission ought to take into consideration the fact that the Rock Island, instead of dividing the revenue with another carrier to whose line the traffic must be diverted in order to reach Milwaukee, could retain all the revenue that the traffic can yield by hauling the grain over its own rails to Chicago, where it can find as good a market as at Milwaukee. While that view doubtless appeals strongly to the principal defendant, it is not just to the shipper. A shipper is entitled to the transportation that he desires on rates that are reasonable, not when tested by the fact that the carrier may earn larger revenues by hauling his wares to a point



that he does not desire to reach, but on rates that are reasonable in accordance with the usual and ordinary tests that are applied to rates. The question before us is, What is a reasonable rate for carrying coarse grains to Milwaukee from the points in question? Having ascertained what would be reasonable rates, it follows that those rates only may properly be imposed upon the traffic by the Commission. We can not lawfully add something to a rate that is already reasonable, because of the fact that the Rock Island has a line to Chicago and if permitted by the shipper could get a longer haul and the entire revenue by taking the grain to that point. The rate must be reasonable with respect to the service actually performed and not with respect to the service that could be performed and the revenue that would be earned if the shipper permitted the carrier to select a market for him.

Testing the situation on these principles, we have no difficulty in arriving at the conclusion that the present combination rates on corn, rye, and oats to Milwaukee are excessive and unreasonable and ought not in the future to exceed the rates on those grains from the same points to Chicago. As all authorities in such matters agree, one of the most satisfactory tests of the reasonableness of the rates of one carrier is a comparison with the rates of other carriers operating in the same territory under the same general conditions. Here we find that all the other lines serving this general grain-producing territory, including those that have no terminals at Milwaukee, have made a common rate to both points. The principal defendant itself has done this with respect to all commodities moving under class or commodity rates. Moreover, it has made common points of Chicago and Milwaukee with respect to the transportation of wheat and barley. It has done this voluntarily. As to the identical rates on those grains, now in effect over the lines of the principal defendant both to Milwaukee and to Chicago, counsel for the principal defendant says:

If the Commission is of the opinion that the maintenance of these rates on wheat and barley alone is any reason why we should maintain them on the other grains, we will of course cancel the wheat and barley rates to Milwaukee, if the Commission will so intimate.

We are unwilling, however, to dispose of the matter in that way. Having voluntarily made a common rate on wheat and barley to Milwaukee and Chicago, we can not disregard the force of that action as evidence by which to measure the justice of the complainant's proposal that common rates should also be made to those points on corn, rye, and oats.

Taking into consideration all the facts disclosed upon the record, we find that the joint through rates on corn, rye, and oats from the local noncompetitive points in question to Milwaukee ought not for the future to exceed the principal defendant's through rates on those grains to Chicago.

Although the complainant asks for the establishment of through routes and joint through rates over the principal defendant's lines in connection with the Chicago, Milwaukee & St. Paul Railway, and doubtless has Clinton in mind as a proper junction through which the joint rates to Milwaukee ought to apply, we shall not, in the order to be entered in conformity with the conclusions that we have reached, tie the hands of the principal defendant in either respect, but shall give it the opportunity to negotiate with any other lines in forming such through routes. While it has the right, as we have endeavored to explain, to demand no more than a reasonable rate for the transportation of coarse grains to Milwaukee, the fact that the Rock Island system reaches other primary grain markets may fairly be said to give it certain equities in the adjustment of the divisions of any through rates that it may establish under our order with a connecting line. But as the matter of divisions is not now before us, we are not to be understood as expressing any conclusions on the point. Our purpose in what has been said is to give the principal defendant the opportunity itself to negotiate with all available lines in carrying out the views here expressed. It must be understood, however, that the through routes to be opened to Milwaukee must be reasonably practical routes.

An order will be entered accordingly.

**PROUTY, Commissioner, concurring:**

I concur in the order which it is proposed to make, since I think it plainly appears that the territory in question should have access to both Milwaukee and Chicago as grain markets on equal terms, but I do not agree with all that is said and implied in the opinion, as I understand it.

The first section of the act gives the shipper a right, in my opinion, to a through route and a reasonable rate, but the rate open to him need not be a joint rate, and the mere fact that no joint rate already exists does not lay upon this Commission any absolute requirement to establish one.

In determining whether the rate applicable over the through route is reasonable or whether a joint rate shall be established, and if so what that rate shall be, it is proper to consider that one of the carriers which is to be made a party to this joint rate has a line of its own reaching another market over which it is for its interest to transport the traffic. A railroad should be allowed to control its traffic unless that be against the public interest. In determining what is the "public interest" this Commission should have regard to the carrier as well as the shipper, and should not permit the whim of one to offset the substantial advantage of the other.

No. 2067.

MILWAUKEE ELECTRIC RAILWAY & LIGHT COMPANY  
v.  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COM-  
PANY ET AL.

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*Submitted February 3, 1909. Decided March 1, 1909.*

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On the record the Commission finds that the class rate of 11 cents per 100 pounds applied to complainant's shipments of clay conduit from Brazil, Ind., to Racine, Wis., was excessive and unreasonable, and that the rate ought not to have exceeded the rate then in effect to Milwaukee. Reparation awarded, and defendants required to maintain for two years no higher rate on clay conduit from Brazil to Racine than from Brazil to Milwaukee.

*John I. Beggs* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*E. B. Peirce* for Chicago & Eastern Illinois Railroad Company.

REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

During the months of July, August, and September, 1907, there were shipped to the complainant over the lines of the defendants from Brazil, in the state of Indiana, to Racine, in the state of Wisconsin, 6 carloads of clay conduit, of an aggregate weight of 323,500 pounds, upon which a class rate of 11 cents per 100 pounds was assessed and freight charges to the amount of \$355.85 were collected. At the time these movements were made there was in effect over the same route a commodity rate of 6½ cents per 100 pounds on clay conduit from Brazil to Milwaukee. While Racine is directly intermediate to Milwaukee on the Chicago & Northwestern Railway, it is not directly intermediate on the line of the principal defendant, but is on a short branch road that connects with its main line to Milwaukee. The record therefore does not present a technical violation of section 4 of the act. But as Racine is only 20 miles from Milwaukee, it is clear that no conditions would justify the application of a class rate of 11 cents on a shipment of the commodity in question from Brazil to Racine while

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the same carriers at the same time maintained a commodity rate of  $6\frac{1}{4}$  cents to Milwaukee. It is alleged in the petition and admitted by the defendants in their answers, that the application of the class rate resulted in unreasonable and excessive charges on these shipments, and in a tariff supplement that became effective on November 1, 1907, proper provision was made for applying the Milwaukee rate on clay conduit to Racine. Subsequently and on March 28, 1908, the present rate of \$1.20 per net ton, or 6 cents per 100 pounds, was made effective. The petition, however, demands reparation only on the basis of the  $6\frac{1}{4}$ -cent rate in force to Milwaukee at the time the shipments moved.

On the record we find that the class rate of 11 cents as applied to this commodity between the points in question was excessive and unreasonable, and that the rate ought not to have exceeded the rate then in effect to Milwaukee. On that basis the complainant is entitled to reparation in the sum of \$137.49, with interest thereon at the rate of 6 per cent per annum. We also find that for the future the rate on clay conduit from Brazil to Racine ought not to exceed the rate on that commodity from Brazil to Milwaukee. An order will be entered accordingly.

15 I. C. C. Rep.

No. 1645.  
UNITED STATES  
v.  
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

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*Submitted January 6, 1909. Decided March 2, 1909.*

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The defendants had in force from Pittsburg, Pa., to Newport, R. I., a through fare of \$12.50, while at the same time a combination of locals over the same line made a through charge of \$11; *Held*, That under the circumstances the higher through fare was unreasonable to the extent that it exceeded the sum of the locals. Reparation awarded.

*William B. Crowell and Harold H. Martin* for complainant.

*William Ainsworth Parker* for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

This is a complaint that the charge by defendants of \$25 for the transportation of two naval recruits from Pittsburg, Pa., to Newport, R. I., was unreasonable and unjust to the extent that it exceeded \$22. Reparation is asked.

In November, 1907, the Baltimore & Ohio Railroad Company, on a request furnished by the Bureau of Navigation of the Navy Department of the United States, issued by the navy recruiting officer at Pittsburg, furnished transportation from Pittsburg to Newport to A. A. Ball and another, for which in due course the Government paid \$25.

While this case involves a claimed overcharge of only \$3, it was stated at the hearing that about 119 recruits had been transported under the same circumstances and conditions as those referred to in the complaint.

Prior to and during the month of November, 1907, the New England Steamship Company was engaged in the transportation of passengers and property in connection with the Baltimore & Ohio and other carriers under joint rates between Pittsburg and Newport. It appears that the New England Navigation Company afterwards, the exact

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date not being shown, acquired the property and business of the New England Steamship Company and is now engaged in transporting passengers between Pittsburg and Newport under joint rates with the Baltimore & Ohio.

At the time of the transportation in question the published through fare via the Baltimore & Ohio and New England Steamship Company from Pittsburg to Newport was \$12.50, including New York transfer and stop-over privilege of ten days each at Philadelphia, Baltimore, and Washington. At the same time there was in effect over the Baltimore & Ohio from Pittsburg to New York a fare of \$9, which did not include stop-overs en route, and was good only on train No. 12. It is asserted by defendants that this fare was made for selling purposes only and was not to be used as a base for rates beyond New York. July 1, 1908, the Baltimore & Ohio published a tariff making the \$9 rate applicable to all trains from Pittsburg to New York and effective for basing purposes.

The issue presented, therefore, is simply whether the through fare of \$12.50 for a single passenger from Pittsburg to Newport was unreasonable because a combination of locals over the same line at the same time was only \$11. The Commission has decided in numerous cases relating to freight transportation that where the combination of locals is less than the through rate the higher through rate is *prima facie* unreasonable. There appears to be no difference in principle between passengers and freight, so far as comparisons between combinations of local rates and through rates are concerned. From a transportation standpoint it would seem that circumstances can rarely exist which would justify charging a passenger more for a through ride between two given points than the combination of local fares between the same points, where the local fares have been voluntarily established by the carrier.

In justification of the higher through fare the Baltimore & Ohio asserts that the \$9 local fare to New York is unreasonably low; that it was put into effect on train No. 12 because the Pennsylvania Railroad, which has the short line from Pittsburg to New York, was securing practically all the business, and that it was afterwards allowed on all trains and the through fare reduced accordingly as a matter of reprisal against the Pennsylvania, which had in the meantime established a through route from Pittsburg to New York via Washington.

As no complaint is made of the \$10.50 local fare from Pittsburg to New York, which includes stop-over privileges, it is contended that complainant is not asking for a reduction of the through fare in force at the time these recruits were transported, but for the establishment of another through fare of a different character—that is to say, a lower through fare without stop-over privileges. There are now in

effect between Pittsburg and New York on all trains, and there were in effect at the time in question on train No. 12, two local fares from Pittsburg to New York. Had there been no \$9 local fare the only apparent ground of complaint would have been the unreasonableness of requiring passengers to pay for stop-over and transfer privileges which they did not desire. Defendants required passengers purchasing through tickets from Pittsburg to Newport to pay a fare made up by combining the higher of two locals to New York with the local beyond, or the combination most favorable to the railroad company. It seems reasonably clear that if carriers maintain through passenger fares made up of the sums of locals they should use the lowest local available, especially when the higher local includes privileges not directly pertaining to the transportation and of which the through passenger does not care to avail himself. This is precisely what the Baltimore & Ohio now does under its current tariff.

We are unable to find justification in the record for the charge of \$12.50 for transporting through passengers from Pittsburg to Newport, who did not desire to stop over, when there was in existence a combination of locals of \$11 over the same line. The local which permitted this combination had been voluntarily established and is still in force with enlarged application. The fact that there was another and higher local which provided certain stop-over privileges did not, in our opinion, warrant the use of that local in making up the through fare. The through passenger was as much entitled as the local passenger to the benefit of the \$9 rate, even if as contended that rate was extremely low. We are therefore constrained to hold that the charge of \$25 for the transportation of the two recruits in question was unreasonable and unjust to the extent that it exceeded \$22, and that complainant is entitled to reparation in the sum of \$3.

An order will be entered accordingly.

15 I. C. C. Rep.

No. 1574.

NATIONAL PETROLEUM ASSOCIATION AND NATIONAL  
REFINING COMPANY

v.

LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY.

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Submitted January 11, 1909. Decided March 2, 1909.

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Under the circumstances of the case, the rule enforced by defendant restricting the receipt and shipment of L. C. L. lots of coal oil and products of petroleum to one day in each week, found to subject complainants and other like dealers to undue and unreasonable prejudice. Any rule which restricts shipments of the oils in question to less than two days in any week is unreasonable, and the days selected for the receipt of these commodities should be separated by at least two intervening days.

*C. D. Chamberlin* for complainants.

*W. A. Northcutt* and *W. G. Dearing* for defendant.

## REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

It is alleged in this case that a rule established and enforced by defendant, which restricts the receipt and shipment of less than carload lots of coal oil and certain inflammable products of petroleum to one day in each week, subjects members of the complaining corporations to undue and unreasonable prejudice and disadvantage in violation of section 3 of the act. It is also alleged that this rule operates to unduly prefer and give advantage to rival concerns engaged in the business of shipping coal oil and petroleum products over defendant's lines.

The National Petroleum Association is incorporated under the laws of Pennsylvania, with its main offices at Cleveland, Ohio; the National Refining Company is an Illinois corporation, with its main offices at Springfield, Ill. The members of both corporations are refiners and shippers of petroleum oil and its products in less than carload lots over various railroad lines including those of defendant.

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The rule in question is found in the Book of Rules and Instructions of defendant's general freight department (Supp. No. 6 to I. C. C. No. A-9478), and reads as follows:

Less-than-carload shipments of coal oil and the following inflammable products of petroleum, viz.: Kerosene oil, naphtha, distillates, refined oil, benzine, fuel oil, carbon oil, crude oil, gas oil, gasoline, benzol, mineral C oil, and also less-than-carload shipments of turpentine and acids in drums and carboys will be received for transportation from your station only on one day of the week, viz: Tuesday. Such shipments must not be loaded in cars with other merchandise. Less-than-carload shipments of lubricating, engine and miners' oil may be received and transported from your station any day of the week. Under no circumstances must the above instructions be deviated from, except where future specific instructions are given you to the contrary. These instructions are intended to supersede any conflicting instructions you may have to the contrary. Delivering agents must immediately notify consignees of arrival of shipments of above description and urge immediate removal of the property. Such shipments must not be stored in warehouses or on platforms or near any other freight pending delivery.

It appears that a rule limiting L. C. L. shipments of petroleum oils on the lines of defendant to one day in the week has been in effect most of the time for more than twenty-five years. Extensions of the rule have been made from time to time. During the year 1907 the limitation was placed on "coal oil and the inflammable products of petroleum including gasoline, naphtha, and benzine, and acids in drums." An earlier rule provided that "less than carload shipments of coal oil and the inflammable products of petroleum including benzine, naphtha, and gasoline, and turpentine" would not be received except one day in the week. It is asserted by defendant that the rule in its present form (effective June 25, 1908), was made to define more clearly the commodities to which the limitation applies.

It is insisted by complainants that there is nothing in the characteristics of petroleum oil commodities that justifies the restriction in question, because oil and gasoline are to a large extent shipped in iron drums; that where wooden barrels are used they are especially prepared with glue applications, and that with careful handling, leaking from these drums and barrels rarely occurs. It is further insisted, and the testimony so indicates, that by reason of this rule oil shipments from points of concentration, such as East St. Louis, Ill.; Evansville, Ind.; and Louisville, Ky., to points on defendant's lines, have been measurably restricted, with consequent injury to the members of the complaining corporations, because of their inability to make prompt deliveries to their customers.

It is further contended that the rule in question operates greatly to the advantage of the Standard Oil Company, which has constructed at convenient points along the lines of defendant, as well as along the

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lines of various other railroads, tank stations which receive their supplies from tank cars and from which distribution in the surrounding territory is made by tank wagons. It appears that the shipments of complainants' members are largely confined to the higher grades of burning oil, which are preferred by consumers to the oil supplied by tank wagons from tank stations of the Standard Oil Company. With the same grade of oil, business conducted under the restrictive rule is handicapped to a considerable extent.

Over the lines of the following railroad companies shipments of petroleum oil products are received and shipped from and to their various stations under the conditions stated with respect of the time for receipt and shipment: Louisville, Henderson & St. Louis Railroad, three days in the week; Illinois Central, every day; Evansville & Terre Haute, Mondays and Thursdays; Evansville & Indianapolis, Mondays and Thursdays; Southern Railway Company, Tuesdays and Fridays; Pennsylvania Company, Tuesdays and Fridays; Chicago, Indianapolis & Louisville, Tuesdays and Fridays; Baltimore & Ohio Southwestern, three days in the week; Cleveland, Cincinnati, Chicago & St. Louis, every day; Rock Island & Frisco system, three days in the week; St. Louis & Southwestern, every day; Yazoo & Mississippi Valley, every day; Chicago & Alton, every day. An investigation of the tariffs on file fails to show any railroad company in the country except the defendant, and the Nashville, Chattanooga & St. Louis, controlled by defendant, which restricts shipments to one day in the week.

In justification of the rule the defendant asserts that the volume of business offered by members of the complaining corporations is small; that it is necessary to set aside certain cars for exclusive use in transporting petroleum oils from its numerous concentrating stations; that the business offered is so limited as not to warrant an extension of the rule with consequent increase of equipment; that in the year 1906, at the request of numerous oil shippers, shipments were received by defendant on two days in the week for a period of about sixty days, with no material increase in the volume of business; and that because of the character of petroleum oils, contaminating food products upon contact and with odor, the rule was adopted and has been maintained for defendant's protection. It is pointed out that shipments by the Standard Oil Company in less than carload lots comprise over 66 per cent of all the oil transported by defendant.

Complainants insist that when two days a week were accorded, the defendant selected Tuesday and Thursday of each week; that the two days were so close together that no substantial relief was afforded, and that shippers were therefore unable to materially increase their business, because they did not have a fair opportunity to demonstrate the effect of a proper two days' rule.

Complainants argue that defendant has no right under the obligations imposed upon it by law to restrict petroleum oil shipments at all; that upon proper tender such shipments must be received and transported under the same conditions as all other freight. With this contention we are unable to agree. The evidence in this case, and in numerous others which have come before the Commission, clearly shows that there is more or less contamination where shipments of these oils are transported with miscellaneous freight, especially food products. In spite of all precautions there is more or less leakage, and this gives rise to complaints and claims for damages to food stuffs and other commodities which are injured by odor or contact. It is well settled that carriers have the right to transport certain commodities under reasonable rules and regulations respecting their receipt, carriage, and delivery. *Moore on Carriers*, p. 99; *5 Elliott on Railroads*, sec. 1465; *1 Hutchinson on Carriers*, sec. 145. We are of opinion that petroleum oils are of such a character and move under such circumstances and conditions that reasonable regulations may be made for their transportation, including reasonable limitation of the time when such shipments will be received.

Is one day in the week a reasonable limitation? In considering this question we must take into account the effect of the rule upon the interests of shippers. From the evidence in this record we are warranted in finding that the restriction now enforced operates to the detriment of complainant's members. A customer who finds himself without oil on Wednesday of a given week, for instance, may not be able to secure a supply until Tuesday or later of the following week. This practically results in advantage to concerns which have facilities for making daily deliveries by means of tank wagons. It is asserted by complainants that the rule was adopted and has been maintained for the purpose of preferring the Standard Oil Company. Upon that question we express no opinion, but the fact is fairly established that the operation of the rule, under the circumstances shown, does unduly prefer large shippers with tank stations from which they make deliveries by wagon.

Shippers of oil have protested to officials of defendant from time to time against the rule. At one time it was extended to include lubricating oils, but upon protest by organizations of business men and shippers those oils were eliminated from the restriction.

The matter of special equipment, which defendant urges as a reason for maintaining the rule, does not seem to be sufficient to justify its enforcement. It is the duty of the carrier to transport for all without undue discrimination or preference. Whether shipments of petroleum oils shall be transported in the same car with general merchandise, or in cars set aside for this particular traffic, the

carrier must determine for itself. Questions of the use of additional equipment and the expense involved are not controlling in determining whether the operation of the rule is unjust to any class of shippers.

Under all the facts and circumstances we are of opinion that the rule now enforced subjects members of the complaining corporations and other like dealers in and shippers of petroleum oils and products to undue and unreasonable prejudice and disadvantage, and is therefore unlawful. We further find that any rule which restricts shipments of the oils in question to less than two days in any week is unreasonable, and that the days selected for the receipt of these commodities should be separated by at least two intervening days—for example, Monday and Thursday, Tuesday and Friday, etc.

An order will be entered accordingly.

15 I. C. C. Rep.

No. 1772.

L. I. BREGMAN &amp; COMPANY

v.

PENNSYLVANIA COMPANY ET AL.

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Submitted December 15, 1908. Decided March 2, 1909.

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Complainant alleges that the charge by defendants for the transportation of a carload of scrap iron from Freeport, Ill., to Wheatland, Pa., was unreasonable, (1) because the combination of local rates over the same route was less than the through rate, and (2) that a charge of \$6.50 for switching in Chicago was unreasonable. It appearing that the difference between the through and combination rates, as applied to the shipment, amounted to only 18 cents, and that the switching charge was properly imposed, complaint is dismissed.

*Joseph H. Turivas* for complainant.

*W. S. Kies* for Chicago & Northwestern Railway Company.

#### REPORT OF THE COMMISSION.

**KNAPP, Chairman:**

In May, 1907, there was shipped on complainant's account a car of scrap iron from Freeport, Ill., to Wheatland, Pa., which was routed by the consignor at Freeport via the Chicago & Northwestern to Chicago and the Blue Line from Chicago to Wheatland. At the time this car moved the published through rate over defendants' lines was \$4 per gross ton, 15-ton minimum. This rate applied to the shipment in question, which weighed 32,200 pounds, made a charge of \$60. The amount actually collected was \$60 freight and \$6.50 switching charges at Chicago, or a total of \$66.50. Reparation is asked for the excess of this charge over the combination of locals.

The local rate of the Chicago & Northwestern from Freeport to Chicago at the time the shipment in question moved was 6 cents per 100 pounds, and the local rate of the Pennsylvania from Chicago to Wheatland \$2.70 per gross ton, 15-ton minimum. The combination of locals, therefore, was \$59.82, or only 18 cents less than the through rate collected. Complainant doubtless supposed that the through rate charged was materially greater than the sum of the locals, but since the fact appears to be otherwise it is assumed that an order of reparation for the trifling difference is not desired.

As to the switching charge at Chicago the following facts appear: In compliance with routing instructions the car on arrival at Chicago was switched to the Michigan Central, over which the Blue Line operates. Tariffs on file show that Wheatland is a prepaid station on the Erie and also on the Lake Shore, with both of which roads the Michigan Central connects and has through rates from Chicago. It has no through rates with the Pennsylvania, nor does the Blue Line operate over the Pennsylvania. When the car was tendered to the Michigan Central that company asked the Chicago & Northwestern for prepayment of charges, because it could not forward the car by the Pennsylvania without disregarding the routing instructions, and because it had no through rates with that road. The consignor was duly informed, but declined to prepay the freight and directed that the car be sent forward on the through rate via the Chicago & Northwestern and the Pennsylvania, and this was done.

Generally speaking, it is the duty of a carrier to transport shipments via the route designated by the consignor, and if this causes additional expense to the shipper the carrier incurs no liability therefor. It does not appear that it was the duty of the Chicago & Northwestern agent at Freeport to have on file tariffs of the Blue Line from Chicago to Wheatland, there being no through rates over the route specified by the shipper. The initial carrier in this case followed the instructions of the consignor, and it appears that such consignor was informed that the shipment could not move via the route designated except upon prepayment of the freight charges. Under these circumstances we are of opinion that the railroad company was not at fault and that the switching charge should be borne by the shipper. It follows that no order for reparation should be made, and the complaint will be dismissed.

15 I. C. C. Rep.

No. 2065.

## AMERICAN REFRACTORIES COMPANY

v.

ELGIN, JOLIET &amp; EASTERN RAILROAD COMPANY ET AL.

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*Submitted February 17, 1909. Decided March 1, 1909.*

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Defendants' rate of 5 cents per 100 pounds for the transportation of fire brick from Joliet, Ill., to Milwaukee, Wis., was excessive and ought not to have exceeded their present rate of 4 cents per 100 pounds. Reparation awarded on that basis with interest at 6 per cent, and defendants required to maintain the lower rate for a period of two years.

*P. B. Mossman* for complainant.

*R. W. Campbell* for Elgin, Joliet & Eastern Railroad Company.

*William Ellis* and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

## REPORT OF THE COMMISSION.

*PROUTY, Commissioner:*

The petition in this case alleges that the complainant, a corporation doing business at Joliet, Ill., made shipment during the months of February, April, May, June, and July, 1907, of 36 carloads of fire brick from Joliet, Ill., to Milwaukee, Wis., aggregating 2,182,240 pounds; that the defendants assessed and the complainant paid transportation charges at the rate of 5 cents per 100 pounds; that said rate was unreasonable and should not have exceeded 4 cents per 100 pounds, the prayer being for reparation in that amount.

The defendants answered, admitting the shipments and the collection of charges as stated in the complaint. The answers further admitted that the 5-cent rate was unreasonable and that it should not have exceeded 4 cents, but denied that the Commission had jurisdiction to award reparation, since 5 cents was the lawfully established rate.

This Commission has held that where it finds the published rate to have been unreasonable, it may award reparation by the difference between what was exacted and what should reasonably have been

15 I. C. C. Rep.

paid. We must, however, be prepared to find that the rate charged was unreasonable, otherwise we should be permitting or creating an unjust preference in favor of the person receiving the unreasonably low rate. In this case the distance is 124 miles, and the transportation over two independent lines of railroad. A rate of 80 cents per ton for a two-line haul of that distance is so low that we were not inclined to permit or direct the payment of reparation without knowing more of the circumstances. The proceeding was accordingly set down for hearing.

The plant of the complainant is located upon the tracks of the Elgin, Joliet & Eastern Railroad, so that shipments for Milwaukee must originate with that company. Delivery in Milwaukee can be made either by the Milwaukee or the Northwestern line. At the time these shipments moved there was in effect, via the Northwestern line, a rate of 4 cents per 100 pounds (such had been the rate via that route for some time before), and the complainant understood that it was the same by the Milwaukee. Effective January 7, 1908, the Milwaukee company published a rate of 4 cents by its route, and both these rates have remained in effect ever since. Shipments seem to be continually moving under them, and instances were called to the attention of the Commission where even lower rates were in effect for the handling of brick in this section.

Both the admission of the defendant and the paid expense bills produced by the complainant show that the shipments were made as alleged. We find that the rate charged was unreasonable and should not have exceeded 4 cents per 100 pounds. Reparation will therefore be ordered in the sum of \$218.22, with interest at 6 per cent from August 1, 1907.

We are further of the opinion that 4 cents per 100 pounds would be a reasonable rate for the future, and that anything in excess of that would be unjust and unreasonable. An order will therefore issue establishing this rate for two years.



No. 1658.

## CARSTENS PACKING COMPANY

v.

## OREGON RAILROAD &amp; NAVIGATION COMPANY ET AL.

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*Submitted February 2, 1909. Decided March 1, 1909.*

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Reparation awarded complainant against the initial carrier for excessive charges on shipments of cattle from Ontario, Oreg., and Nampa, Idaho, to Tacoma, Wash., on account of unnecessary diversion in transit effected without the knowledge or consent of the shippers.

*Ellis, Fletcher & Evans* for complainant.

*F. C. Dillard* for Oregon Railroad & Navigation Company.

*Charles W. Bunn* for Northern Pacific Railway Company.

## REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

On or about February 14, 1907, there were shipped to the complainant at Tacoma, in the state of Washington, 24 carloads of cattle, of which 11 carloads were from Ontario, in the state of Oregon, and 13 were from Nampa, in the state of Idaho. The shipments were specifically routed through Wallula, at which point the Oregon Railroad & Navigation Company maintained a junction with the Northern Pacific Railway. Because of washouts that had occurred on the former line, the shipments were diverted by that road through Portland, and there turned over to the Northern Pacific. The diversion was effected without the knowledge or consent of the shippers, and was unnecessary, for the line of the principal defendant, as was subsequently ascertained, had been reopened and was then in operation. The complainant asks reparation in the sum of \$503.20 on account of the additional transportation charges that he was compelled to pay by reason of the misrouting.

The Northern Pacific, in its answer, denied any knowledge of the routing instructions or any liability to the complainant, and as the record supports it in that respect, the complaint as to that defendant may be dismissed. The principal defendant, instead of filing a formal answer to the petition, made application for permission to refund the sum of \$461.80 on account of such diversion, for which it acknowledged responsibility.

From Ontario to Tacoma there was in force a published through rate of \$116 per 36-foot car, which applied only to 10-carload movements routed through Wallula. On the 11 carloads that were shipped between those points freight charges to the amount of \$1,467.40 were collected, being at a rate of \$133.40 per car, the combination of the locals into and beyond Portland. Had the movements been made in accordance with the original routing the freight charges would have aggregated \$1,276. On the carloads shipped from Ontario the complainant has therefore been damaged to the extent of \$191.40 as a result of the misrouting.

There was no joint through rate in effect between Nampa and Tacoma, and on the 13 carloads moving between those points freight charges amounting to \$2,035.80 were exacted, based on a combination rate of \$156.60 per 36-foot car, being the sum of the local rates into and out of Portland. While the cars in which the shipments were loaded were not precisely of that length, 11 being 36 feet and 6 inches and the other 2 cars 35 feet and 7 inches in length, it is understood that in actual practice cars of those sizes are treated by the defendant as 36-foot equipment and charged for accordingly. If the shipments had not been diverted from the proper routing, a lower combination rate of \$137.42 per 36-foot car would have been applicable, made up by using, in connection with the rate of \$116 from Ontario to Tacoma, a local rate of \$21.42 per 36-foot car from Nampa to Ontario. This local rate is a distance-tariff rate and is published as a rate of \$18 per "standard car," which is defined in the tariff as a car 30 feet or under in length. The same tariff prescribes a scale of percentages for cars of greater lengths, up to 33 feet, and provides that on cars longer than 33 feet charges will be applied at "proportional rates." As we understand the effect of this provision, a 36-foot car ought to take 119 per cent of the "standard-car" rate; and the local from Nampa to Ontario is therefore \$21.42 per 36-foot car, making the combination rate from Nampa, through Wallula, to Tacoma \$137.42 per 36-foot car. On that basis the freight charges on the 13 carloads from Nampa would have aggregated only \$1,786.46; and on those shipments the complainant is therefore entitled to damages in the sum of \$249.34.

An order will be entered requiring the Oregon Railroad & Navigation Company to make reparation to the complainant in the sum of \$440.74 with interest thereon at the rate of 6 per cent per annum from the date of the payment of the charges in question. This award is less than the sum the defendant has offered to pay, the difference arising out of the fact that in its calculations the defendant has used a local rate of \$19.80 per 36-foot car from Nampa to Ontario, arrived at by the improper application of a percentage scale prescribed in a tariff of special rules.

No. 1633.

CAMBRIA STEEL COMPANY

v.

BALTIMORE &amp; OHIO RAILROAD COMPANY.

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Submitted January 2, 1909. Decided March 8, 1909.

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Demurrage which accrued under the carrier's rules was paid under protest some time after it had accrued, and reparation therefor is sought under the Commission's decision *In the Matter of Demurrage Charges on Privately Owned Tank Cars*; Held, That the Commission's order of June 2, 1908, that its ruling *In the Matter of Demurrage Charges on Privately Owned Tank Cars* would not be retroactive, requires dismissal of complaint.

*H. S. Endsley* for complannant.

*Wm. Ainsworth Parker* for defendant.

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Rule 5 of the Pittsburg Car Service Association's demurrage rules provided, prior to November 15, 1908, that—

When both cars and tracks are owned by the same party, no charge will be made; but when private cars are detained on the tracks of other corporations, firms, or individuals, or on tracks belonging to or operated by members of this association, or cars controlled by the latter, on private tracks, these rules will apply.

For which, on that date, there was substituted the following:

Private cars on tracks of the owner, or on privately owned tracks of the consignor or consignee when used for the transportation of commodities which the owners of the cars produce or in which they deal, are not subject to these rules.

Between October 15, 1907, and March 31, 1908, defendant, a common carrier amenable to the act to regulate commerce, transported to Johnstown, Pa., certain cars owned by private car lines, and loaded with freight consigned to complainant. About the middle of April, 1908, defendant rendered to complainant a bill for demurrage on said cars which had accrued while they were standing upon the private

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tracks of complainant at Johnstown, Pa. The cars were delivered to complainant on its interchange tracks, and after such delivery defendant rendered no service in connection therewith, complainant's railroad department performing the subsequent switching.

Complainant refused to pay the charges for demurrage on the ground that privately owned cars standing on its private tracks were not subject to demurrage charges, basing its position in the view expressed in the report of the Commission *In the Matter of Demurrage Charges on Privately Owned Tank Cars*, decided April 13, 1908, 13 I. C. C. Rep., 378. However, in June, 1908, the charges were paid under protest and with the understanding that the question of whether or not they were lawfully assessable should be presented to the Commission for decision. The allegation is made that Rule 5 of the Pittsburgh Car Service Association is unjust and unreasonable, and reparation is asked, but in view of the fact that the rule has been amended to now provide for what the complainant claimed, the only question involved is that of reparation. By stipulation between the parties, entered into at the hearing, the amount of reparation was changed to \$168.

The question is whether or not reparation shall be granted, notwithstanding the fact that the demurrage was properly assessable at the time it accrued, and properly payable as soon as accrued, and whether the fact that the charges were actually paid under protest after the decision of the Commission *In the Matter of Demurrage on Privately Owned Tank Cars*, *supra*, is a proper ground for an order of reparation.

Under date of June 2, 1908, prior to the filing of the petition in this case, the Commission ruled that:

It is not the intention of the Commission that its ruling (*In the Matter of Demurrage Charges on Privately Owned Tank Cars*) shall be given a retroactive effect. The demurrage question has been in a state of great confusion, and the desire of the Commission is to establish a uniform, fair, and practicable system for the future. Claims for refund of demurrage charges previously collected in accordance with regular tariff rule will not be entertained with favor.

Does the fact that the charges were paid under protest after the decision of the Commission on the main question and just prior to the Commission's ruling that its decision would not be given retroactive effect place this complainant in a better position than those who paid demurrage charges under similar circumstances immediately upon their accrual? We think not.

It appears in the stipulation upon which the case was submitted that the refusal to pay the charges was on account of the decision of the Commission *In the Matter of Demurrage on Privately Owned Tank Cars*, *supra*. If, by ruling of the Commission, that decision

15 I. C. C. Rep.

has been decisively made of future effect and not to be applied retroactively, the protest based on the decision must fall. Manifestly, when the Commission has stated a general rule in regard to reparation applicable alike to all under similar circumstances, the fact that a particular shipper has refused to promptly comply with his lawful duty under the act, should not place him in a more advantageous position than the shipper who has complied with the law. An order for reparation in this case would effectuate a discrimination against all other shippers, who, in accordance with the ruling of the Commission that its decision shall not be given retroactive effect, are barred from reparation for demurrage in the same circumstances, and would violate the fundamental principle of the act—like treatment to all alike under like circumstances.

The ruling of the Commission of June 2, 1908, requires the dismissal of this complaint, and it will be so ordered.

15 I. C. C. Rep.

No. 1296.

BOARD OF MAYOR & ALDERMEN OF THE CITY OF  
BRISTOL, TENN.,

v.

## SOUTHERN RAILWAY COMPANY.

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*Submitted June 10, 1908. Decided March 8, 1909.*

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Complainant's contention that defendant's rate of \$1.20 per ton for the transportation of bituminous coal from Middlesboro, Ky., to Bristol, Tenn., is discriminatory when compared with its 80-cent rate for a haul of the same distance to Chattanooga, Tenn., is not sustained, there being a dissimilarity in the circumstances and conditions surrounding the traffic to Chattanooga that justifies a lower rate to that point than to Bristol. No specific attack is made upon the Bristol rate in and of itself, nor is there in the record any basis upon which to ascertain whether it is reasonable or unreasonable in and of itself.

*A. B. Whiteaker* and *E. K. Bachman* for complainant.

*E. K. Bachman* for Bristol Gas & Electric Company, intervener.

*Claudian B. Northrop* for defendant.

## REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The defendant, the Southern Railway Company, transports bituminous coal from mines at Middlesboro, in the state of Kentucky, in a southerly direction to Chattanooga, in the state of Tennessee, and also, as is alleged, in an easterly direction to Bristol, which is partly in the state of Tennessee and partly in the state of Virginia. Chattanooga and Bristol are each distant from Middlesboro by about 180 miles, although the particular route over which coal usually moves, when it moves at all from Middlesboro to Bristol, is nearly 200 miles in length. The rate to Bristol is \$1.20 per ton, while the rate to Chattanooga is only 80 cents per ton. To correct this alleged discrimination the complainant has filed this petition in the interest of coal consumers at Bristol, praying for an order requiring the defendant to establish the same rate to Bristol as it demands for the movement

of coal from Middlesboro to Chattanooga. The rate to Bristol is attacked solely on the ground that it is discriminatory as against that community when compared with the more favorable rate to Chattanooga. There is no specific allegation that the rate to Bristol is unreasonable in itself and no evidence of that nature was offered by the complainant.

On the hearing some importance was attached to the charge that the defendant, together with the Norfolk & Western and the Virginia & Southwestern, had entered into an unlawful agreement some years ago by which the coal-consuming localities in this general territory were parceled out among the three carriers; that their respective rates were so adjusted as to give effect to the unlawful conspiracy; and that the rate schedules subsequently established practically cut Bristol off from other mines and left the Appalachia group of mines, in the state of Virginia, as its sole source of supply. As proof of the alleged unlawful agreement the complainant calls attention to the fact that while the volume of coal moving to Bristol from the Appalachia mines had increased year by year and during the first ten months of 1907 had aggregated 90,410 tons, on the other hand the coal tonnage to Bristol, moving over the lines of the defendant from lines at Middlesboro and Coal Creek, as well as the movement to Bristol over the Norfolk & Western, had diminished year by year and together aggregated only 97,683 tons for the entire eight years from 1900 to 1907. As counsel for the complainant puts it, the tonnage from Appalachia during those years "has increased about five times over," while the tonnage from the other sources of supply, as he also states, has been "cut in two about three times."

In further proof of the unlawful agreement a former official of the Virginia & Southwestern Railway Company, who was connected with its rate making at the time the alleged agreement was made, but whose interests now lie in the direction of securing lower rates on coal between the points in question, when called as a witness on behalf of the complainant, testified in substance that the defendant and the Virginia & Southwestern had agreed that the latter might make whatever rate it desired from Appalachia to Bristol, and that the rates into Bristol over the line of the defendant from Middlesboro and Coal Creek should be uniformly 20 cents per ton higher. The history of the rates to Bristol from Appalachia and Middlesboro was offered in evidence for the purpose of showing that the agreement resulted in a concert of action between the two lines with respect to their coal rates; and it seems to indicate that changes in the rates from Appalachia to Bristol were generally followed in a short time by changes of like tendency in the rates from Middlesboro to Bristol. But the alleged agreement is assigned to a date nearly ten years

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ago; and whatever may have been its influence on rates at that time, it is difficult to see how it can have any importance at this time, for the Virginia & Southwestern, for all practical purposes, has now been merged with the Southern Railway, and its rates are therefore under its control.

There remains for consideration only the allegation that the rate of \$1.20 per ton from Middlesboro to Bristol is discriminatory when compared with the 80-cent rate for a haul of the same distance to Chattanooga, and that question may be disposed of in a few words. In the first place, the history of the coal traffic in this territory discloses no tendency on the part of Middlesboro operators to compete with the Appalachia coal at Bristol. The same witness who testified about the alleged unlawful agreement admitted that there had never been any extensive movement of coal from Middlesboro to Bristol, and the record confirms the statement. On any normal rate adjustment it could not ordinarily meet Appalachia coal on equal terms in the Bristol market, for the Appalachia field is only 70 miles distant from Bristol, while the Middlesboro mines are more than 180 miles away. The Middlesboro rate, in the absence of some other influence, ought, therefore, to be materially higher than the Appalachia rate; and as there is no clear proof that the cost of production is less at Middlesboro than at Appalachia, nor any suggestion of a willingness on the part of the Middlesboro operators to absorb the difference in rates, we may fairly conclude that Bristol does not offer a tempting market for the Middlesboro output. On the contrary, most of the coal is used by the defendant and the Louisville & Nashville for locomotive and other purposes, and for the balance there are markets west of Middlesboro where it meets with no competition at all.

The Middlesboro operators apparently make no complaint of the rate to Bristol. The complaint is made on behalf of the Bristol consumers. Is there then any undue discrimination in rates as alleged? We think not, if the record before us is to be accepted as a full and fair disclosure of all the material facts that may affect the situation. There are conditions surrounding the coal movement from Middlesboro to Chattanooga and also to Coal Creek that justify, and compel the defendant to establish, lower rates to both points than it otherwise might deem adequate. There is a coal development within 5 miles of Chattanooga; another within 14 miles, at Whiteside; and a still more important one at Rathburn, which is 21 miles away. From these points coal is delivered at Chattanooga at from 45 to 50 cents per ton. From adjacent mines coal also reaches Coal Creek at about the same rates. The defendant in the effort to meet this competition from mines on the lines of other roads has fixed the rate of 80 cents per ton from Middlesboro to Chattanooga, on which the



complaint is based. Even this rate seems not to suffice to hold its traffic, for the record shows that its tonnage into Chattanooga has been constantly diminishing in volume during the past ten years, and in 1907 amounted only to 9,250 tons.

Without extending this report further we find that there is a dissimilarity in the circumstances and conditions surrounding the traffic to Chattanooga that justifies a lower rate to that point than to Bristol. As heretofore stated, no specific attack is made upon the Bristol rate in and of itself, nor is there in the record any basis upon which to ascertain whether it is reasonable or unreasonable in and of itself. Even if the present rate of \$1.20 per ton may be regarded as too high in and of itself, and on that point we express no opinion, we do not see that any circumstances exist under which Middlesboro coal could find an active market at Bristol in competition with the Appalachia coal. In the case of *Board of Mayor & Aldermen of the City of Bristol, Tenn., v. Va. & S. W. Ry. Co. et al.*, ante p. 453, we have just fixed a rate for the future of 75 cents a ton for the transportation of coal from the Appalachia field to Bristol, and in view of the much longer haul from Middlesboro we do not see how a rate could be fixed that would enable the consumers at Bristol to substitute Middlesboro coal for Appalachia coal.

As the case is presented on the record before us the complaint is not sustained and must therefore be dismissed. An order to that effect will be entered.

15 I. C. C. Rep.

No. 1509.

KANSAS CITY TRANSPORTATION BUREAU OF THE COM-  
MERCIAL CLUB ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted December 28, 1908. Decided March 8, 1909.*

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Complaint alleges that rate adjustment established by defendants, under and in accord with Commission's decision in *Farmers, Merchants & Shippers' Club of Kansas v. A. T. & S. F. Ry. Co. et al.*, 12 I. C. C. Rep., 351, is unjust and unduly discriminates against the Kansas City market. The principles of that decision are reaffirmed. Complaint dismissed.

*George T. Bell and H. G. Wilson* for complainants.

*T. J. Norton and Robert Dunlap* for Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company.

*E. B. Peirce and M. A. Low* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; St. Louis & San Francisco Railroad Company; St. Louis, San Francisco & Texas Railway Company, and St. Louis, Kansas City & Colorado Railroad Company.

*J. C. Jeffery* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*F. C. Dillard* for Galveston, Harrisburg & San Antonio Railway Company and Houston & Texas Central Railroad Company.

*A. E. Helm* for Wichita Board of Trade et al., interveners.

*U. S. Pawkett* for Dazey-Moore Grain Company et al., interveners.

*G. F. Grattan* for Railroad Commission of Kansas, intervener.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

In cases Nos. 918 and 919, *Farmers, Merchants & Shippers' Club of Kansas v. Atchison, Topeka & Santa Fe Ry. Co. et al.*, 12 I. C. C. Rep., 351, hereinafter referred to as cases 918 and 919, the Commission dealt with a complaint from growers and shippers of grain against the rate adjustment which forced or attracted Kansas grain to the Kansas City market instead of permitting it to move on lower rates directly from points of origin of the grain to the Gulf ports for export and to Texas milling and consuming points.

15 I. C. C. Rep.

In those cases the Commission decided that the rate adjustment complained of was unreasonable and unjust. It prescribed specific through rates from various points of origin to Galveston, Tex., for export, and from the same points of origin to points of destination in Texas, lower than the sums of the local rates to Kansas City and the proportional rates from Kansas City.

The situation and the reasons for this conclusion and this action are fully set out in the report in those cases, and it is not necessary to here repeat them.

The complaint now brought herein by the Kansas City Transportation Bureau of the Commercial Club, of Kansas City, Mo., and the Mercantile Club, of Kansas City, Kans., alleges that the rate adjustment prescribed in said cases 918 and 919 is unjust and unduly discriminatory against the Kansas City market. It is stated that Kansas City is a great primary grain market, being so located geographically as to afford the producers of Kansas and other neighboring states a ready and general market for their products, and that it is served by many lines of railroad, which create there active competition which is of benefit to the producers and the public. It is alleged that through rates from points of origin to destinations in Texas and to the Gulf ports for export, which are less than the combination on Kansas City, have the effect of diverting the grain from the Kansas City market, to the injury of complainants. No attack is made upon the reasonableness of any rates in and of themselves. The complaint is summed up in the allegation that direct rates from points of origin of the grain to Texas points and to Gulf ports that are lower than the combination rates on Kansas City are unreasonable and that they create undue prejudice and disadvantage against the Kansas City dealers.

It is alleged that reducing the through rates to the Gulf ports and Texas points without correspondingly reducing rates to Kansas City—

had the effect of negating an understanding entered into in 1902 between certain of the defendants and the grain interests of Kansas City, with the consent of this honorable Commission, by which it was agreed that the combination of local rates from Kansas points to Kansas City plus proportional rates from Kansas City to Mississippi River crossings and Chicago should be no higher than the so-called through rates from said Kansas points to the destinations named.

It is stated that while this agreement in and of itself had reference only to the rates to Mississippi River crossings and Chicago it contemplated, so far as northern Kansas territory is concerned, like adjustment of rates to Texas group points and to Gulf ports for export.

This reference to an understanding grows out of the fact that a complaint had been made to this Commission attacking the then existing rate adjustments east from Kansas City and under which numerous

proportional rates applied east of Kansas City, depending upon the points of origin of the grain. Complainants and defendants in that proceeding reached an understanding between themselves as to adjustment of rates on grain to the east. It is now contended that it was intended to also include rates to the south. This, however, is denied, and the correspondence seems to indicate that only rates to the east were considered. Request was made upon the Commission for permission to withdraw the complaint then before it, and the Commission replied to that request by saying:

Upon the filing of tariffs showing removal of the arbitraries upon Kansas grain, an order will be entered discontinuing the case without prejudice to the institution of a new proceeding. Making concessions in rates depending upon the prior dismissal of the complaint before the Commission is not considered a proper practice.

It will therefore be seen that the Commission did not become, in any sense, a party to any agreement as to what the rates or the rate adjustment should be, or as to how long they should remain in effect.

In that case the complaint involved rates from an inland primary market to other inland grain markets where further sale, treatment, and transportation of the grain would be had and be arranged for. In cases 918 and 919, as in this case now considered, the issue is, rates from points of origin to point of consumption or to the export port.

In cases 918 and 919 the Commission dealt more particularly with rates from points of origin in southern Kansas. In adjusting their rates in accordance with the orders in those cases the carriers extended the adjustment to points of origin on their lines in northern Kansas, and the complaint herein attacks that adjustment from points of origin in Kansas north of the main line of the Union Pacific Railroad. Complainants argue that the average distance from these points in northern Kansas to all of the Gulf ports via Kansas City is slightly more than via the direct routes. The average rates from these points to the same destinations via the direct routes are approximately 3 cents per 100 pounds less than the combination on Kansas City.

Transit privileges are permitted in connection with the direct routes, and complainants argue that those privileges at points like Wichita substantially offset any additional terminal cost which the carriers would meet in taking the grain through Kansas City. This is probably correct, to a degree, but it can not be doubted that the terminal expenses in a great center like Kansas City are greater than in a smaller place where terminal work can be done more expeditiously and economically.

The Missouri Pacific is the only one of the trunk lines reaching from the grain fields to the southwest and Gulf ports which necessarily hauls the grain from northern Kansas points of origin through

Kansas City to Texas points and the Gulf. This line in fact equalizes its through rates and the Kansas City combinations through a transit privilege at Kansas City. Complainants allege that this privilege is of little value to them because under it they can not determine exactly the value of the grain until they know where it will go from Kansas City. Presumably the privilege is of the same value at Kansas City that it would be at any other similar point.

The Santa Fe lines can and do, under the existing arrangement, haul the grain direct from northern Kansas points of origin to Texas points and Gulf ports through Strong City, which is nearly 150 miles west of Kansas City. In order to take this grain over its own lines to Texas or the Gulf via Kansas City, it would be necessary to haul it from Strong City to Kansas City and back again, a total of nearly 300 miles out of line haul.

The Rock Island lines are able to, and do under the present rate adjustment, haul grain from northern Kansas points of origin direct to Texas points and Gulf ports through McFarland, Kans., a junction point of their own lines, approximately 100 miles west of Kansas City, and to haul this grain through Kansas City and to the Gulf over their own lines would necessitate an out of line haul of almost 200 miles, McFarland to Kansas City and back again.

It is suggested that inasmuch as the Santa Fe and the Rock Island lines are parties to the proportional rates from Kansas City to the Gulf and to Texas points they should bring this grain to Kansas City and there take their chances of getting the haul from Kansas City or of surrendering it to some other line for further transportation. To this the carriers reply that they originate this grain on their own lines, that they have their own lines to Texas and the Gulf, and that therefore they have a right to haul it via that route which is most advantageous to them, provided they give to the shippers proper service and reasonable rates.

In *Pacific Lumber Mfrs.' Asso. et al. v. Northern Pacific Ry. Co. et al.*, 14 I. C. C. Rep., 51, the Commission considered a prayer for the establishment of through routes and joint rates which, if granted, would require the carriers that originated the traffic and that had their own long lines in the immediate direction of the destination of the traffic to surrender it to a competing line at a junction point not far from the points of origin of the traffic. The Commission there said:

Every attempt to require by law the establishment of through routes and joint rates has been met by the objection upon the part of railways that such arrangements were properly matters of contract, and that each railway should be left free to control its own traffic. It has been insisted that unless this were so railway operation would be unjustly hampered and railway development unduly checked.

This contention upon the part of the railways has apparently been, to an extent, recognized by Congress in the enactment of this statute. The Commission is only

allowed to establish a through route and a joint rate when the carriers themselves have neglected to provide a reasonable and satisfactory one. The Northern Pacific and the Great Northern may transport this lumber over their own rails and are not required to surrender it to a connection at Portland, provided the public is properly served without that connection. Such was undoubtedly the intention of the lawmaker and it is our duty to give effect to this intent.

\* \* \* \* \*

The lumber produced in these mills of western Washington is mainly consumed in the east. It is probable that the average consumption is 2,000 miles from the point of production. The Northern Pacific and the Great Northern extend from these forests 2,000 miles east. They have penetrated these forests with branch lines which are of no value except as they originate this traffic. They have put themselves in shape to handle this business over practically the entire length of their lines. They have done this upon the theory that they were to be allowed to carry this traffic over their own lines, and they could not afford to construct their originating railroads and to establish and maintain the rates which have been maintained unless they were permitted the long haul upon this business. They could not afford to operate upon the same basis if they were obliged to deliver it over to the Union Pacific at Portland. It is very doubtful whether the common interest of the public and the railway does not require that these several transcontinental lines shall be allowed to handle this traffic, which they originate.

Justice dictates the same conclusion. These forests of western Washington will furnish the present output for a half century to come. These railroads were constructed upon the theory that in so far as they could they would be allowed to control this traffic. The traffic itself is of enormous value. It furnishes an eastbound loading, so that to-day the movement of empty cars is west. It converts the operation of these roads from what would otherwise be an unprofitable into a highly profitable result. Can it be just to take away this traffic from these lines? Is it not their property, to which they are entitled as much as they are to the right to impose a reasonable rate? Certainly the first consideration is the public interest; but if these lines furnish satisfactory transportation facilities upon which this lumber can be moved to eastern markets, is it not their right to carry it there?

Complainants call attention to the fact that in cases 918 and 919 the Commission laid down the general rule that rates from stations between 700 and 750 miles from Galveston should not exceed 25 cents, and that one-half cent per 100 pounds for each 50 miles should be added or subtracted from that rate in fixing the rates from other stations. They argue that, therefore, a difference of more than one-half cent for each 50 miles for the out-of-line hauls from Strong City or McFarland is unreasonable. There is, however, a material difference between a reasonable amount to be added for additional mileage on a straight-away long haul and a reasonable allowance to be added for an out-of-line haul which involves two and probably three terminal services. If the Santa Fe takes grain from points north of Strong City to Texas points over its own lines via Kansas City, it must take it out of the train which brings it to Strong City, put it into the train for Kansas City, take it through the terminal services at Kansas City, haul it back to Strong City, and there again take it from that train and put it into a train for the south.

The Commission has declined to require free out-of-line hauls in *Chickasaw Compress Co. v. G., C. & S. F. Ry. Co., et al.*, 13 I. C. C. Rep., 187, and in *Celina Mill & Elevator Co. v. St. L., S. W. Ry. Co., et al.*, 15 I. C. C. Rep., 138.

In cases 918 and 919 the Commission dealt with export rates to the port of Galveston only. In figuring the average distances and average rates in the present proceedings, complainants take into consideration all of the Gulf export ports. This is undoubtedly proper, because the rates apply alike to the several ports so taken into consideration. But even then the difference in distance is slightly in favor of the direct routes, and if Galveston alone is considered, the difference in distance is materially in favor of the direct lines. Galveston is the nearest export port for this grain, and it moves to Galveston over lines of railways upon which it originates. Galveston is the natural port from which to export this grain, and doubtless the greater part of that which goes for export moves to and via Galveston. The Santa Fe and the Rock Island have their own lines to the port of Galveston and to many Texas points.

The view of the Commission in the original cases was based largely in the conviction that the territory in which this grain was grown and the growers of the grain as well were entitled to the benefit of their proximity to the Gulf and to the great consuming territory in Texas, and of their direct lines of transportation, without moving their grain through or paying tribute thereon to the Kansas City market. In the report in those cases it was said:

The putting in effect of these new rates will doubtless tend to divert from Kansas City territory to Galveston considerable quantities of grain.

In the original cases the Commission dealt more directly and particularly with rates from points of origin in southern Kansas, but nothing was said which could be understood as standing in the way of, or as prohibiting, the application of the same principle to points in northern Kansas. The complaint now before us is that it is unjustly discriminatory against Kansas City to apply the principles of the original cases to rates from points of origin in northern Kansas. If, however, the carriers upon whose lines the traffic originates can carry it to the Gulf, or to destinations in consuming territory in Texas, over their own lines, more advantageously and economically and at lower rates to the shippers than they can carry it through Kansas City, we find it difficult to see how the public interests would be served by breaking up that adjustment and imposing upon this grain higher transportation charges.

The Wichita Board of Trade, the Farmers, Merchants and Shippers' Club of Kansas, and the Southern Kansas Millers' Commercial Club, as well as the Fort Worth Freight Bureau, have intervened in this case and protest against change in the present rate adjustment.

It appears that the farmers who raise this grain receive more for it than they did prior to the establishment of the present rate adjustment; that, generally, they consider the present adjustment favorable to them, and that they are well satisfied with it.

Similar showing is made for the millers through the Southern Kansas Millers' Commercial Club, and there does not seem to be justification for reversal of the conclusion formerly reached, or for confining it to southern Kansas. The Commission said, in *Banner Milling Co. et al. v. New York Central & Hudson River R. R. Co. et al.*, 14 I. C. C. Rep., 398:

While there is in the nature of things no estoppel of record in proceedings before this body, the Commission must of necessity, when it reaches a conclusion upon a given state of facts, adhere to that conclusion in subsequent proceedings unless some new facts or changed conditions are brought to its attention, or unless it proceeded upon some misconception in reaching the original decision.

The complaint here is that the adjustment ordered by the Commission has attracted grain away from Kansas City markets which otherwise would go there. As has been seen, that was the expectation and intent of the Commission in its former decision.

Kansas City is one of the great grain markets of the world. It has great transportation facilities. It has had the advantage of the foresight and enterprise of those who established a grain market there before any other was established in near-by territory or in competition therewith. It has reaped rich reward therefrom. It is perfectly natural that it should wish and strive to maintain all of its prestige, prominence, and advantage, but since those days many lines of railroad have been built into the grain fields; short lines and cut-offs have been constructed; a great grain-growing state has been added to the Union; competitive markets have been established; new export ports have been opened; and the new conditions so created must be given consideration. To now hold that these defendants may not make through rates over their direct and shorter routes, via which they get the long haul on the business which they originate, lower than apply through Kansas City, where the grain would be marketed and be subject to diversion to the lines of other carriers would, if discrimination in favor of Kansas City were to be avoided, necessitate similar findings for other grain markets, and so the entire profit in transportation of the grain would be eaten up in terminal services, or the value of the additional terminal services so required would have to be added to the transportation rates.

The complaint herein could be satisfied in one of three ways: (a) By reducing the rates into Kansas City; (b) by reducing the rates from Kansas City; or (c) by increasing the rates via the direct routes. The rates now in effect via the direct routes are materially reduced rates established in conformity with an order of this Commission. We have no authority to order an advance in those rates even if we



were so inclined—which we are not—and, therefore, we could specifically deal with this question only by ordering a reduction in these rates to Kansas City or from Kansas City. The former would involve the whole relative adjustment of inbound rates as between Kansas City and other western primary markets. The latter would involve the whole relative adjustment of outbound rates from every market and to every export port. We are not prepared to do either. Clearly unreasonable rates or undue and unjust discrimination should be corrected, even if long-standing adjustments must be disturbed, but here no rate is alleged to be unreasonable, and the discrimination alleged and complained of is, as has been noted, between an intermediate or primary market which naturally wishes to handle the grain and forward it for export or to the consuming territory, and direct shipment of the grain from points where it is grown to export ports and consuming territory under lower transportation charges. We can not find that discrimination so created is undue or unjust.

It is said that the Commission could simply direct that the rates via the direct line should not exceed the combination on Kansas City. Such an order would conflict with conclusions that have been reached in other cases, would be diametrically opposed to the contentions of Kansas City interests in *Burnham, Hanna, Munger Dry Goods Co. et al. v. C., R. I. & P. Ry. Co. et al.*, 14 I. C. C. Rep., 299, and be an abandonment of principles that have been announced as results of definite convictions which are still entertained.

It should be remembered that, as found and justified in cases 918 and 919, proportional rates from Kansas City to the Gulf for export are substantially less than the rates from points of origin directly intermediate between Kansas City and the Gulf and much nearer to the Gulf. The rates via Kansas City are now no higher than they were before our original order was entered, but under that order the grain from certain points and territory finds its way to territory of consumption and to export ports at lower rates and therefore along lines of less resistance. And this in face of the fact found in cases 918 and 919 that, under competition, rates on grain from Kansas City in all directions have been "forced down to a very low level."

If the rates herein questioned involved the ability of Kansas City to sell grain in competition with another similar market trading under similar conditions, an element of discrimination might be found which it would be proper to remedy. That, however, is not the case. It can not be said that moving the grain over direct, shorter, and more economical routes which give the long haul to the carriers upon whose lines it originates, at rates lower than would apply if it were hauled through Kansas City, unjustly discriminates against Kansas City as compared with any other city or interests similarly situated, and it follows that upon the whole record the complaint must be dismissed.

No. 1771.

J. ROSENBAUM GRAIN COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY  
ET AL.

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Submitted January 7, 1909. Decided March 8, 1909.

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1. Defendants collected from complainant  $18\frac{1}{2}$  cents per 100 pounds on 60,000 pounds of wheat shipped in a car of 55,000 pounds' maximum capacity from Kansas City, Kans., to Galveston, Tex., for export, and thus collected on 5,000 pounds more than the maximum loading capacity of the car; *Held*, That this was an unreasonable charge. Reparation awarded.
2. The tariff provision of the defendants prescribing a minimum weight on all shipments of wheat for export from Kansas City to Galveston is unreasonable and in direct conflict with the administrative rulings of this Commission.

*Mayer, Meyer & Austrian* and *H. C. Bangs* for complainant.  
*James Hagerman, Joseph M. Bryson, and W. W. Müller* for defendants.

## REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complainant engages in shipping wheat from its elevator in Kansas City, Kans., to Galveston, Tex., for export, over the lines of the defendants, common carriers. We find the facts in this case to be as follows:

The complainant, about October 1, 1907, placed an order with the defendants at Kansas City, Mo., for 10 cars for shipment of wheat to Galveston, Tex., for export. On October 1, 1907, the defendants placed at complainant's elevator for loading 2 cars, M., K. & T. No. 2904, marked capacity 50,000 pounds, and M., K. & T. No. 1782, marked capacity 60,000 pounds, and complainant loaded into said 50,000-pounds-capacity car 55,000 pounds—its maximum capacity—and 66,000 pounds in the 60,000-pounds-capacity car. Defendants charged the complainant  $18\frac{1}{2}$  cents per 100 pounds on 60,000 in the 50,000-pounds-capacity car and thus collected  $18\frac{1}{2}$  cents per 100

pounds on 5,000 pounds more than the maximum loading capacity of said car.

The defendants justify such charge on the ground that their published tariffs provide a minimum of 60,000 pounds on wheat transported from Kansas City to Galveston for export, and that about 81 per cent of their box cars have a capacity of 60,000 pounds; and that taking into consideration the heavy terminal expenses to which they are subjected in moving export grain from Kansas City to Galveston, which are determined by the carload and not by the actual weight of the grain, they are justified in making the minimum not less than 60,000 pounds, and that the rate on export grain is a very low rate based on a minimum weight of 60,000 pounds; that if the minimum weight in their tariff should be the marked capacity of the car, in many cases cars of light capacity would be forced upon the defendants for transportation use and would result in a noncompensatory rate. Other lines, such as the Chicago, Rock Island & Pacific Railway Company, the Atchison, Topeka & Santa Fe Railway Company and the Missouri Pacific Railway Company transport wheat for export from Kansas City to New Orleans at the same rate of 18½ cents per 100 pounds, and have in their tariffs the proviso that the marked capacity of the car determines the minimum. The defendants have over 1,200 cars of 40,000 pounds capacity, over 663 cars of 50,000 pounds capacity, and over 125 cars with 28,000 pounds capacity, and their plea of justification would enable them to demand and collect for 60,000 pounds of wheat intended for export, although the capacity of the cars furnished for such shipment was only 50,000 pounds, or 40,000 pounds, or 28,000 pounds.

Our conclusions are that the charge for 60,000 pounds at 18½ cents per 100 pounds, when the car's maximum capacity was only 55,000 pounds, and only 55,000 pounds were loaded into the car, was an unreasonable and unjust charge of \$9.25, and that the complainant is entitled to reparation for that amount; and that the tariff provision of the defendants prescribing a minimum weight on all shipments of wheat for export from Kansas City to Galveston is unreasonable and unjust, and is in direct conflict with the administrative rulings of this Commission.

An appropriate order will be issued accordingly.

15 I. C. C. Rep.

No. 1397.  
HARLOW LUMBER COMPANY  
v.  
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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*Submitted January 18, 1909. Decided March 8, 1909.*

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Complainant alleged that a through rate of 32 cents per 100 pounds upon lumber, in carloads, from Warsaw, N. C., to Chappaqua, N. Y., was unreasonable, because it exceeded the combination of local charges to and from New York, but it appeared that for reasons stated complainant could not have taken advantage of the combination of local charges, except at an expense as great or greater than the through rate; *Held*, That the record does not disclose a typical through rate in excess of the combination of locals such as has been condemned in general terms by the Commission. Reparation denied.

*C. W. Rodliff* for complainant.

*Henry Wolf Bikle* and *George Stuart Patterson* for Pennsylvania Railroad Company.

*Ed. Baxter* and *R. Walton Moore* for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

*KNAPP, Chairman:*

On April 6, 1907, the Warsaw Lumber Company delivered to the Atlantic Coast Line Railroad at Warsaw, N. C., a carload of dressed pine, 35,500 pounds, consigned to complainant at New York, N. Y., "within lightering limits." On April 8, 1907, complainant mailed to the Pennsylvania Railroad Company a letter reading as follows:

Mr. T. C. POLLOCK, *Agt.*,  
*Lightering Dept., Penn. R. R.,*  
*New York, N. Y.*

DEAR SIR: On April 6th there was shipped from Warsaw, N. C., car A. C. L. 15174, consigned to our address, New York, within lightering limits, Penna. R. R. delivery. On arrival of this car or its transfer, will you please forward it to the N. Y. C. & H. R. R. at Sixtieth street, to be forwarded by them to us at Chappaqua?

Yours, truly,

HARLOW LUMBER COMPANY,  
By C. W. RODLIFF.

The Pennsylvania Railroad diverted the shipment in accordance with complainant's request. In due course the lumber reached Chappaqua and the freight charges thereon of \$113.60 were paid by one Haviland, who had purchased the lumber from complainant at a delivered price. A joint through rate of 32 cents per 100 pounds, Warsaw to Chappaqua, was applied in accordance with Atlantic Coast Line tariff, I. C. C. No. M-1270. At the same time there was in effect a rate on lumber from Warsaw to New York, including lighterage at the latter point, published in Atlantic Coast Line tariff, I. C. C. No. 1176, of 21 cents per 100 pounds, and a rate of 7 cents per 100 pounds over the New York Central from Sixtieth street station, New York, to Chappaqua, published in New York Central tariff, I. C. C. No. B-4981. Applying to this situation the general rule that a joint through rate ought not to exceed the combination of local rates between the same points, complainant alleges that the through rate of 32 cents charged on this shipment was unreasonable to the extent that it exceeded 28 cents, the combination upon New York, and asks reparation accordingly.

Complainant is a partnership engaged in the wholesale lumber business at Hartford, Conn. It has no lumber yards within the lighterage limits of New York Harbor. Complainant's agent testified that it did not intend to take physical possession of the car at New York and then reship it, but that the purpose of consigning the car to New York and then diverting it to Chappaqua was to secure the benefit of the two local rates. Delivery of the car to complainant and its reshipment did not actually take place, and could not have been effected except at an expense apparently quite as great as that incurred by application of the through rate, for the following reasons:

Complainant could not accept delivery of the car at any yard of its own within the lighterage limits, because it possessed no such property. There were two possible courses by which it might have taken advantage of the two locals. It might have accepted delivery at one of the Pennsylvania Railroad freight terminals, there unloaded the lumber, and transferred it by dray to a New York Central terminal. This would have involved unloading, drayage, and reloading by consignee, and though the cost of such an operation does not appear it seems altogether probable that it would have amounted to as much as 4 cents per 100 pounds, the difference between the through rate and the combination of locals. On the other hand, complainant might have demanded floatage of the car and lading to the New York Central terminal. The Pennsylvania tariff provides for free floatage within New York Harbor of lots of 6 carloads or more consigned to one harbor point, and that in case a float moves less than 6 carloads a charge of \$9 per car will be made for each car less than 6 carloads

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floated. Under this tariff floatage of a single car to the New York Central terminal would have cost complainant \$45. Complainant appears to have confused the terms floatage and lighterage as used in the tariffs applicable to delivery of traffic in New York Harbor. As so used, floatage includes delivery of the car and lading, while lighterage includes delivery only of the lading. It appears, therefore, that the two local rates which complainant seeks to have applied to this shipment do not cover the entire movement, but leave a gap which could be filled only by the application of a third tariff with resulting cost greater than the through rate, or by an actual reshipment, which would involve unloading, drayage, and reloading, and that the case presented does not disclose a typical through rate in excess of the combination of locals such as has been condemned in general terms by the Commission.

By Supplement No. 24 to Atlantic Coast Line tariff, I. C. C. No. M-1270, effective July 15, 1908, the rate from Warsaw to all points on the Harlem division of the New York Central, including Chappaqua, was reduced from 32 to 27 cents, or 1 cent less than the rate asked by complainant. This was brought about by a reduction of the division of the Pennsylvania and New York Central north of Richmond and Pinners Point from 23 to 18 cents, and appears to have been made without reference to this proceeding, but for the purpose of placing points upon the Harlem division more nearly on a parity with points in the same general territory.

The reasonableness of the 32-cent rate *per se* was not the subject of evidence, and we are of opinion that the facts disclosed do not present a case where a through rate in excess of the combination of locals is unreasonable. In other words, the carriers have sustained the burden of justifying the rate adjustment of which complaint is made. For reasons which have been stated in *Commercial Coal Co. v. B. & O. R. R. Co. et al.*, 15 I. C. C. Rep., 11; *Menefee Lumber Co. v. T. & P. Ry. Co.*, 15 I. C. C. Rep., 49; and *Foster Lumber Co. v. A. T. & S. F. Ry. Co. et al.*, 15 I. C. C. Rep., 56, the voluntary reduction of a rate by a carrier, without proof of the unreasonableness of the prior rate, does not furnish a proper basis for reparation, and we think that principle applicable to the present case. On the other hand, all we decide is that, under the circumstances, a joint through rate apparently in excess of the combination was not unlawful, and nothing in this opinion should be construed as authorizing or warranting an increase of the rates now in force. The complaint is dismissed, and it will be so ordered.

15 I. C. C. Rep.

No. 1041.

INDIANAPOLIS FREIGHT BUREAU

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-  
WAY COMPANY ET AL.

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*Submitted May 1, 1908. Decided March 2, 1909.*

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1. Complainant alleges unjust discrimination in rates on various articles from Indianapolis to East St. Louis, Ill., and St. Louis, Mo., as compared with rates on the same articles from Chicago. While recognizing the differences in competitive conditions as between Indianapolis and Chicago, the Commission is convinced that the disparities between existing rates from these respective points of origin are too great on some commodities, and prescribes a proper relative adjustment on iron and steel articles, castings, burlap and gunny bags, furniture and chairs, iron beds, and wooden ladders.
2. Complainant challenges the reasonableness of the Official Classification rule providing for the application of fourth class ratings on castings, japanned, in carloads, and third class on less than carloads. Formerly carload shipments of such articles were charged fifth class rates and less-than-carload shipments, fourth class. The application of the higher ratings is condemned and the carriers ordered to apply fifth class ratings on carload and fourth class on less-than-carload shipments. These ratings were applied during a long period of time and the advance results solely from conformance with a rule which follows an arbitrary line of demarcation for the convenience of the carriers in applying a general classification basis. This does not constitute a sound transportation reason for such marked differences in rates, and no other conditions appear as a warrant therefor.
3. Complainant alleges unjust discrimination against Indianapolis in that a rule permitting the use of 2 cars at the highest minimum weight and the lowest rate provided for 1 car to accommodate shipments of light and bulky articles is applied at Chicago, while the same is denied on similar shipments from Indianapolis to western trunk-line territory and to Mississippi River crossings. The Commission is of the opinion that the application of this so-called two-for-one rule from Chicago and its nonapplication from Indianapolis result in such great disparities between the freight charges from these respective points as to work an unjust discrimination against the place last mentioned, but the rule

15 I. C. C. Rep.

in the form in which it is applied at Chicago will not be extended. However, a rule similar in substance, but so restricted and modified as to prevent its improper manipulation, should be extended to Indianapolis or else the unlawful discrimination should be removed by a readjustment of the minimum weights on the various articles referred to in the complaint so that they will conform approximately to the actual loading capacity of cars. This feature of the complaint will be retained, and if at the end of three months from this time the carriers have been unable to remove the discrimination, the Commission will then make such order as may appear necessary and proper.

4. The complaint as to unjust discrimination against Indianapolis in the matter of rates on fresh meats to Cleveland, Columbus, and Dayton, Ohio, and Fort Wayne and Terre Haute, Ind., also as to rates on chairs and furniture from Indianapolis to Chicago, has been satisfied, and no order is made in respect to these features.
5. The complainant alleges the exaction by defendants of unreasonable class rates from Indianapolis to Ohio River points and to Chicago, respectively, as compared with rates between Chicago and the Ohio River. The mere fact that there is a greater percentage disparity between rates on two classes from Indianapolis than on two other classes, or that a disparity greater in one case than in another exists between the corresponding classes from Indianapolis and Chicago, does not afford a just or proper basis or reason for the rearrangement of rates and disturbance of conditions, commercial and otherwise, throughout a large territory when it is manifest that the established system is the outgrowth of actual conditions and the result of a gradual development. No showing has been made that the present rates are unreasonable or unjust in and of themselves, or that they yield to the carriers exorbitant earnings for the transportation service. This prayer of the petition is denied.
6. The Commission is not convinced that the present proportional rates published from Indianapolis to Ohio River crossings for application on through traffic to southeastern territory are unreasonable. It is evident that proportional rates from more distant points must be less per mile to permit such points to compete in the common market, and the Commission does not feel warranted in condemning a system of rate making whereby wholesome competition between producing centers is preserved when no showing is made that the rates complained of are unreasonable or do in fact result in unjust discrimination, or that the more advantageous geographical location of one point has been disregarded and vitiated by an abnormal adjustment.

*Edward E. Gates* and *W. A. Ketcham* for complainant.

*O. E. Butterfield* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Erie & Western Railroad Company; and Lake Shore & Michigan Central Railway Company.

*John G. Williams* for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company and Vandalia Railroad Company.

*George W. Kretzinger* for Chicago, Indianapolis & Louisville Railway Company; Cincinnati, Hamilton & Dayton Railway Company; and Judson Harmon, receiver thereof.



## REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The feature of this complaint which will be first considered is that alleging the exaction by defendants of unreasonable class rates from Indianapolis to Ohio River points and to Chicago, respectively, as compared with rates between Chicago and the Ohio River.

The class rates between Chicago and Cincinnati, Jeffersonville, and other so-called Ohio River points are—

Class....	1	2	3	4	5	6
Rate....	40	34	25	17	15	12

From Indianapolis to said Ohio River points the class rates are—

Rate....	25	22	19½	12½	9½	8
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And from Indianapolis to Chicago—

Rate....	31½	27	21½	14	11½	9
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Rates between Indianapolis and Ohio River points are made in accordance with the Central Freight Association scale for 120 miles (the short-line distance is 111 miles) and between Indianapolis and Chicago the scale rates for 180 miles apply (the short line distance is 183 miles).

The distance between Indianapolis and Ohio River points is approximately 40 per cent and between Indianapolis and Chicago 60 per cent of the average distance of 300 miles between the termini, i. e., Chicago and Ohio River points.

The basis proposed by complainant contemplates making the rates from Indianapolis to Ohio River points 50 per cent, and from Indianapolis to Chicago 70 per cent of the through rates between Chicago and Ohio River points, in each case adding 10 per cent to the percentage which the Indianapolis mileage in either direction is of the total distance between the termini, thus avoiding the result of having the sum of the intermediate rates equal the through rate. Upon this basis the proposed adjustment would result in specific rates as follows:

Between Indianapolis and Ohio River points:

Class....	1	2	3	4	5	6
Rate....	20	17	12½	8½	7½	6

Between Indianapolis and Chicago:

Rate....	23	24	17½	12	10½	8½
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At the present time there is no uniformity of percentage in the differences between rates on the several classes from Indianapolis and on the corresponding classes from Chicago. For example, the first

class rate from Indianapolis to Cincinnati and Jeffersonville is 62½ per cent of the first class rate from Chicago; second class, 64 per cent; third class, 78 per cent; fourth class, 73½ per cent; fifth class, 63.33 per cent; and sixth class, 66.66 per cent. The first class rate, Indianapolis to Chicago, is 78.7 per cent of the first class rate from Cincinnati to Chicago; second class, 79.4 per cent; third class, 86 per cent; fourth class, 82.4 per cent; fifth class, 76.7 per cent; and sixth class, 75 per cent. Were these rates adjusted on a mileage basis with relation to the Chicago rates, the Indianapolis rates to the Ohio River would be 37.5 per cent, and from Indianapolis to Chicago 62.5 per cent of the rates between Chicago and Cincinnati.

The relationship existing between rates from points intermediate to New York and Chicago and rates applying between those termini is cited by complainant as an example of the proper basis for the construction of rates from intermediate points, rates from western termini points, i. e., Buffalo, Pittsburg, etc., being 60 per cent, in either direction, of the New York-Chicago rates. These rates are also cited as exemplifying a proper relationship between rates on the respective classes, since they show an exactly similar percentage adjustment between the several classes as that which obtains between the New York-Chicago class rates.

Rates between Chicago and New York, between Pittsburg and New York, and between Buffalo and New York and Buffalo-Pittsburg and Chicago, and revenue per ton per mile yielded by said rates are shown by the following table:

#### RATES BETWEEN CHICAGO AND NEW YORK.

	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 6.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Class rates in cents per hundredweight .....	75	65	50	35	30	25
912 miles—revenue in cents per ton per mile .....	1.64	1.42	1.1	.77	.66	.55

#### RATES BETWEEN PITTSBURG AND NEW YORK.

	45	39	30	21	18	15
	2	1.76	1.35	.95	.81	.68
Class rates in cents per hundredweight .....	45	39	30	21	18	15
444 miles—revenue in cents per ton per mile .....	2	1.76	1.35	.95	.81	.68

#### RATES BETWEEN BUFFALO AND NEW YORK.

	39	33	28	19	16	13
	1.9	1.6	1.36	.926	.78	.63
Class rates in cents per hundredweight .....	39	33	28	19	16	13
410 miles—revenue in cents per ton per mile .....	1.9	1.6	1.36	.926	.78	.63

#### RATES BETWEEN BUFFALO-PITTSBURG AND CHICAGO.

	45	39	30	21	18	15
	1.71	1.49	1.14	.8	.69	.57
	1.92	1.67	1.28	.9	.77	.64
	2	1.73	1.33	.93	.8	.66
Class rates in cents per hundredweight .....	45	39	30	21	18	15
Between Chicago and Buffalo—625 miles—revenue in cents per ton per mile .....	1.71	1.49	1.14	.8	.69	.57
Between Chicago and Pittsburg—468 miles—revenue in cents per ton per mile .....	1.92	1.67	1.28	.9	.77	.64
On basis of 450 miles (distance used under CFA scale in constructing these rates) revenue in cents per ton per mile .....	2	1.73	1.33	.93	.8	.66

The revenue per ton per mile under existing and proposed rates between Indianapolis and Cincinnati-Jeffersonville, and between Indianapolis and Chicago; also revenue per ton per mile yielded by the rates in force between Chicago and Cincinnati-Jeffersonville, is shown as follows:

**RATES BETWEEN INDIANAPOLIS AND CINCINNATI-JEFFERSONVILLE.**

	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 6.
Class rates in cents per hundredweight.....	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
110 miles—revenue in cents per ton per mile.....	25 4.64	22 4	19.5 3.64	12.5 2.27	9.5 1.72	8 1.45
Proposed rates.....	20	17	12.5	8.5	7.5	6
Revenue in cents per ton per mile under proposed rates.....	3.68	3.1	2.27	1.54	1.36	1.1

**RATES BETWEEN INDIANAPOLIS AND CHICAGO.**

Class rates in cents per hundredweight.....	31.5	27	21.5	14	11.5	9
180 miles—revenue in cents per ton per mile.....	8.5	3	2.4	1.55	1.28	1
Proposed rates.....	28	24	17.5	12	10.5	8.5
Revenue in cents per ton per mile under proposed rates.....	3.1	2.67	1.94	1.33	1.17	.94

**RATES BETWEEN CHICAGO AND CINCINNATI-JEFFERSONVILLE.**

Class rates in cents per hundredweight.....	40	34	25	17	15	12
300 miles—revenue in cents per ton per mile.....	2.66	2.26	1.67	1.13	1	.8

It is asserted on behalf of the carriers that the class rates between Chicago and Cincinnati, between Indianapolis and Cincinnati, and between Indianapolis and Chicago, also the rates from Buffalo and Pittsburg to Chicago and New York, are made as nearly in accordance with the Central Freight Association distance scale as the peculiar circumstances and conditions obtaining in each case will permit.

Rates are not invariably made on short-line distances, it being contended by defendants that where there is so much territory to be provided for it is necessary to cover many points by one rate, necessitating the adoption of a fair average distance and the scale rates are intended to be applied as maxima, any departure therefrom almost invariably resulting in the application of rates in excess of those provided under the distance scale.

This scale is the result of a general compromise between the various carriers operating in Central Freight Association territory, and the rates so provided resulted from conditions affecting the traffic and influencing those carriers prior to and at the time of their adoption.

For example, the Big Four system is a consolidation of several small lines which formerly used different distance scales for the construction of rates between their local stations. After the consolidation of these lines rates between points on different branches of the Big Four so constituted were found to lack cohesion; that is, there was no uniform or relative basis for their application. When a uniform basis was adopted, this old adjustment between points on the various lines constituting the Big Four system materially influenced the new rates then established; and in like manner, when in 1896 the Central Freight Association roads considered the adoption of a general basis for application throughout that territory, the class schedules of the Big Four, and of all other lines, however they might have been originally established, were considered, and thus influenced the modified common basis subsequently used.

This complaint is an attack primarily upon the reasonableness *per se* of the class rates in effect from Indianapolis to Ohio River points and to Chicago. While comparisons are made between these rates and those applying between Chicago and Ohio River points, we think it clear that no showing has been made of unjust discrimination against Indianapolis shippers such as would warrant the Commission in making an affirmative order changing the present basis. We can not condemn the rates complained of without also condemning the whole system of rates as constructed under the Central Freight Association mileage scale, since these rates are made in substantial conformity thereto, and it is evident that any readjustment of the Indianapolis rates, even if it did not affect the rates generally applied throughout this territory, must necessarily result in a disturbance of the rates at least in territory intermediate between Chicago and Cincinnati.

The alignment on a uniform percentage basis between the classes, as prayed for in the petition, would doubtless bring about a more logical and consistent adjustment; but the mere fact that there is a greater percentage disparity between rates on two classes from Indianapolis than on two other classes, or that a disparity greater in one case than in another exists between the corresponding classes from Indianapolis and Chicago, does not afford a just or proper basis or reason for the rearrangement of rates and disturbance of conditions, commercial and otherwise, throughout a large territory when it is manifest that the established system is the outgrowth of actual conditions and the result of a gradual development. No showing has been made that the present rates are relatively unreasonable or unjust, or that they yield to the carriers exorbitant earnings for the

transportation service. The Commission is therefore constrained to deny this prayer of the petition.

PROPORTIONAL RATES TO OHIO RIVER CROSSINGS.

Effective March 1, 1907, proportional rates were established from Indianapolis to Cincinnati and Jeffersonville to apply on through traffic to southeastern territory, including Alabama, Georgia, Florida, and eastern Tennessee, as follows:

Class....	1	2	3	4	5	6
Rate ....	22	19.5	17.5	11	8.5	7

From Chicago to Ohio River crossings the following proportionals apply on through traffic destined to southeastern territory, to wit:

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate ....	35	30	22	15	13	10	12	12	10	10	13	15	20

Complainant asks an adjustment for Indianapolis based on 50 per cent of the Chicago proportionals. These proposed rates from Indianapolis to Cincinnati-Jeffersonville would yield revenue per ton per mile on the numbered classes as shown below:

	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 6.
Rates in cents per hundredweight.....	Cents. 17.5	Cents. 15	Cents. 11	Cents. 7.5	Cents. 6.5	Cents. 5
Revenue in cents per ton per mile (110 miles).....	8.2	2.72	2	1.86	1.18	.91

The revenue per ton per mile under the present rates is shown as follows:

	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 6.
Proportional rates in cents per hundredweight.....	Cents. 22	Cents. 19.5	Cents. 17.5	Cents. 11	Cents. 8.5	Cents. 7
Revenue in cents per ton per mile (110 miles).....	4	3.5	3.2	2	1.5	1.27

From Chicago to Cincinnati-Jeffersonville the existing proportional rates yield revenue per ton per mile on the numbered classes as follows:

	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 6.
Proportional rates in cents per hundredweight.....	Cents. 35	Cents. 30	Cents. 22	Cents. 15	Cents. 13	Cents. 10
Revenue in cents per ton per mile (300 miles).....	2.33	2	1.46	1	.86	.67

• The proportional rates from East St. Louis to Cincinnati-Jeffersonville and the revenue per ton per mile accruing to the carriers therefrom are shown as follows:

	Class 1.	Class 2.	Class 3.	Class 4.	Class 5.	Class 6.
	Cents. 23.00	Cents. 19.00	Cents. 17.00	Cents. 12.00	Cents. 10.00	Cents. 8.00
Proportional rates in cents per hundred weight.....						
Revenue in cents per ton per mile:						
Cincinnati, 338 miles.....	1.36	1.13	1.00	.71	.60	.48
Jeffersonville, 271 miles.....	1.70	1.40	1.26	.88	.74	.59
Average.....	1.53	1.26	1.13	.79	.67	.53

The St. Louis rates are the bases in constructing rates to southeastern territory. Certain southern lines, including the Louisville & Nashville, Southern, Mobile & Ohio, and Illinois Central, having their own rails through from St. Louis to that territory, adopted as a basis of through rates certain differentials above the Cairo and Evansville rates. The Illinois Central, having also through rails from Chicago, adopted a differential basis from Chicago to the same territory with relation to the St. Louis basis.

Notwithstanding the fact that the Big Four operates a through line from Chicago to the Ohio River, via Muncie, this last-mentioned point is not accorded the proportional basis. Proportional rates are not applied from other intermediate points between Indianapolis and Cincinnati and Louisville, such as Columbus, Ohio, which pays the full local on through traffic to southeastern territory.

The roads beyond the Ohio River charge their full locals, irrespective of the point of origin.

The proportionals from Indianapolis range from 12 to 15 per cent under the local rates to Ohio River points, substantially corresponding with the relationship between the local and proportional rates from Chicago. There is no uniform percentage relationship between local and proportional rates, the proportional rates from one point being made with relation to those from a competitive point to the same markets.

Complainant claims that the establishment of the proposed proportional rates from Indianapolis would not disturb the adjustment at other points, because this basis is not applied generally from Central Freight Association territory. However, from other points the local rate is applied on through traffic, and granting Indianapolis lower proportionals would disturb the parity now existing between the bases applying from Indianapolis and from such other points, however such bases may be constructed.

It will be noted that Indianapolis already has proportionals which are materially lower than those applying from Chicago. However, she asks a readjustment with regard to the rates in effect from Chi-

cago in the approximate ratio which her distance from the Ohio River bears to the Chicago distance. It is evident that such an adjustment would add to the advantages in freight rates which Indianapolis shippers already enjoy over Chicago shippers to southeastern markets. They already have lower rates by reason of their closer proximity to that territory, and we are therefore unable to see wherein they are prejudiced by reason of the present relation of rates. Nor can the Commission hold that because the proportionals from Chicago to Cincinnati are not higher than the proportionals from Indianapolis by the same percentages as the Chicago mileage is in excess of the Indianapolis mileage such an adjustment *ipso facto* gives undue preference and advantage to the Chicago shipper and subjects the Indianapolis shipper to unjust discrimination. It is evident that proportional rates from a more distant point must be less per mile to permit that place to compete in the common market; and the Commission does not feel warranted in condemning a system of rate making whereby wholesome competition between producing centers in a common market is preserved when no showing is made that the rates complained of are unreasonable or do in fact result in unjust discrimination or that the more advantageous geographical location of one point has been disregarded and vitiated by an abnormal adjustment.

#### LOCAL RATES TO EAST ST. LOUIS.

On the date of filing of the petition, April 26, 1907, the following rates were in effect from Indianapolis to East St. Louis:

Class....	1	2	3	4	5	6
Rate....	37	32	23½	16	13½	10½

At the present time the local rates from Indianapolis to East St. Louis are:

Class....	1	2	3	4	5	6
Rate....	38	32½	24	16½	13½	10½

The rates from Cincinnati-Jeffersonville-New Albany and other Ohio river points to East St. Louis are:

Rate....	41	34½	25½	17½	15	12
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It will be noted the Indianapolis rates are the following percentages of the rates from Ohio river points, to wit:

Rate....	93	95	95	95	90	87½
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The short-line distance from Cincinnati to East St. Louis is 338 miles, from Jeffersonville 271, and from Indianapolis 239 miles. Thus the Indianapolis distance is approximately 78.5 per cent of the

average short-line distance from the Ohio River crossings, and complainant proposes a readjustment of the Indianapolis rates to East St. Louis on the basis of 80 per cent of the Cincinnati-Jeffersonville-New Albany-Louisville rates, which would result in specific rates on the several classes approximately as follows:

Class....	1	2	3	4	5	6
Rate ....	33	27½	20½	14	12	9½

These rates would yield revenue per ton per mile on the several classes as follows:

Rate....	2.78	2.32	1.73	1.18	1.00	0.78
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Revenue per ton per mile under existing rates between Indianapolis and East St. Louis:

Rate....	3.20	2.74	2.03	1.39	1.14	0.89
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Revenue per ton per mile yielded by the rates from Cincinnati to East St. Louis:

Rate....	2.43	2.04	1.51	1.04	0.89	0.71
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And by the rates from Jeffersonville to East St. Louis:

Rate....	3.03	2.55	1.88	1.29	1.11	0.88
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We are not convinced that the rates from Indianapolis to East St. Louis are relatively unjust as compared with rates from Cincinnati, Jeffersonville, New Albany, and other Ohio River points. From Indianapolis to St. Louis rates are constructed in accordance with the Central Freight Association distance scale; and hence, without some positive showing of hurtful or unjust discrimination against Indianapolis in the application thereof, we can not condemn the Indianapolis rates without also condemning every other rate established under that scale. There is nothing in the case before us to warrant the making of so sweeping an order. Because the revenue per ton per mile yielded by rates from farther distant points is less than that yielded by rates from a shorter distant point, it does not necessarily follow that the latter is subjected to unjust discrimination.

#### RATES ON FRESH MEATS.

That feature of the complaint relating to unjust discrimination against Indianapolis and undue preference in favor of Chicago and East St. Louis in the matter of rates charged on fresh meats to Cleveland, Columbus, and Dayton, Ohio, and Fort Wayne and Terre Haute, Ind., has been satisfied, tariffs having been issued subsequent to the filing of the petition readjusting the rates substantially as prayed for by complainant. This readjustment has resulted in a reduction of the rate on dressed meat, carloads, minimum 20,000



pounds, Indianapolis to Cleveland, from 37 to 22 cents per 100 pounds; to Columbus, from 22 to 20; to Dayton, from 19½ to 15½; to Fort Wayne, from 20 to 16; and to Terre Haute, from 19½ to 14.

#### COMMODITY RATES TO ST. LOUIS.

The complaint as to alleged unjust discrimination in the application of class rates on various articles from Indianapolis to East St. Louis and St. Louis as compared with lower commodity rates applied on the same articles from Chicago has been partially satisfied by reason of advances made in the Chicago rates, as follows:

On canned goods the rate from Chicago has been advanced from 12 to 15 cents, the rate of 13½ cents being continued from Indianapolis. On cotton piece goods the rate from Chicago has been advanced from 23 to 27½ cents; the rate from Indianapolis is also 27½ cents. The rate from Chicago on mixed carloads of wire mattresses, metal couches, and iron beds has been advanced from 18 to 22 cents; the rate from Indianapolis is 24 cents. On pickles, sauces, and kraut, in straight or mixed carloads, the Chicago rate has been advanced from 10 to 15 cents; the Indianapolis rate is 13½ cents. The rate on wooden handles from Chicago has been advanced from 10 to 11½ cents. The rate on this article from Chicago Heights, a manufacturing suburb of Chicago, located on the Chicago & Eastern Illinois Railroad, is also 11½ cents per 100 pounds. The Indianapolis rate is 13½ cents. The rate on vinegar from Chicago has been advanced from 9 to 12½ cents, as against the Indianapolis rate of 13½ cents.

The following table shows existing rates from Chicago and Indianapolis to St. Louis on the several principal articles as to which complainant contends there is an undue disparity; also rates in effect on the date petition was filed:

*Rates from Chicago and Indianapolis to St. Louis.*

	From Indianapolis.		From Chicago.	
	On date petition filed.	Present rates.	On date petition filed.	Present rates.
Iron beds, straight carloads.....	32	*24	18	b 16.6
Furniture, new, all kinds.....	32	*32½	22	d 22
Iron and steel, structural, bar, band, rod, plate, sheet, iron pipe, couplings, connections.....	11.5	13.5	8	9
Ladders.....	23.5	*24	16.6	*16.6
Chairs.....	55.5	*32½	22	d 22
Castings, in boxes, casks, or loose, weight 100 pounds or over, carloads.....	11.5	13.5	10	11
Bags, burlap and gunny.....	16	16.5	10	10

\* Applies on a minimum of 12,000 pounds, subject to Rule 27 of classification.

b Minimum 16,000 pounds.

d Applies on a minimum weight of 10,000 pounds, 36-foot cars, and 18,000 pounds for 50-foot cars, subject to Rule 27 of classification.

\* Applies on a minimum of 10,000 pounds for any length car.

\* Applies on a minimum of 12,000 pounds for any length car.

There is no market in St. Louis for iron and steel and heavy hardware manufactured in Indianapolis or Chicago, except when the St. Louis competitor is unable to supply the demand. In competing in that market, however, the Chicago manufacturer has a net advantage of  $4\frac{1}{2}$  cents per 100 pounds, 1 cent of the gross difference of  $5\frac{1}{2}$  cents in the rates being offset by the lower rate from Pittsburg to Indianapolis. Indianapolis manufacturers in consequence of this disadvantage attempt to meet the Chicago competition only when they are overstocked; under normal conditions they can not afford to do so.

A 36-foot car will contain approximately 8,000 pounds of furniture and a 50-foot car 12,000 pounds, these weights being from two to six thousand pounds less than the minima prescribed. On a 50-foot carload the Indianapolis shipper pays for a minimum of 18,000 pounds, or 6,000 pounds more than can be loaded, which, at  $32\frac{1}{2}$  cents per 100 pounds, amounts to \$19.50, so that this, added to \$12.60, representing the difference in freight rate proper as between Chicago and Indianapolis, makes the aggregate difference in charges, which the Indianapolis shipper must absorb, \$32.10.

It has been a custom of years for western lines to make unusually low rates from Chicago to the Mississippi River crossings, the nearest of which is about 135 miles from Chicago, upon the theory that the line hauling the traffic to the Mississippi River would probably receive the outbound haul, and also with the idea of building up such points located on their rails. This basis was extended to the lower Mississippi River crossings, including St. Louis, so that rates via such crossings are generally the same as those made via the upper crossings, which are much less distant from Chicago. Thus the rates from Chicago to St. Louis on many commodities are comparatively lower than the distance would seem to warrant, because of the application via St. Louis of the same rates as apply via the nearer crossings.

However, the rates to St. Louis in some cases are lower than to the nearer crossings; for example, the rate on structural iron from Chicago to Clinton, one of the nearer crossings, is 10 cents per 100 pounds, or 1 cent higher than to St. Louis, and the 9-cent rate applies in both directions between Chicago and St. Louis. The carriers explain that certain lines leading from Chicago to St. Louis, and which do not pass through East St. Louis, apply the same rate to St. Louis as is applied to East St. Louis by other lines serving both places, which accounts for the absorption of the bridge toll of 2 cents in the St. Louis rate, whereas to some of the upper crossings the bridge toll is added to the east bank rate.

While we recognize the fact that the Big Four and other Central Freight Association lines are parties to the rates from Chicago because it is necessary to compete for traffic from that point on the basis established by the western roads, under all the circumstances, and making due allowance for differences in competitive conditions, etc., we think the disparities between existing rates from Indianapolis and Chicago, respectively, are too great on some commodities. In the opinion of the Commission rates on iron and steel articles, including castings, and on burlap and gunny bags, from Indianapolis to East St. Louis and St. Louis should not exceed rates on the same articles contemporaneously charged from Chicago by more than  $2\frac{1}{4}$  cents; on furniture and chairs by more than 7 cents; on iron beds, straight carloads, and on wooden ladders, not otherwise specified, by more than 4 cents per 100 pounds.

#### RATES FROM INDIANAPOLIS TO CHICAGO.

That feature of the complaint relating to rates on chairs and furniture from Indianapolis to Chicago, as compared with rates from Michigan points to same destination, has been satisfied, the Indianapolis rate on furniture having been reduced to third class by commodity tariff, effective July 15, 1907 (the same exception to the classification made from Michigan points); and by a change in the Official Classification to provide for the application of second class rating on chairs, in carloads, from all points, which is the same basis in effect from Michigan points and Cincinnati by commodity tariffs.

#### THE "TWO-FOR-ONE" RULE.

The so-called "two-for-one" rule, which is applied from Chicago on shipments of light and bulky articles, such as furniture, chairs, ladders, and vehicles, and denied on similar shipments from Indianapolis to western trunk-line territory and to Mississippi River crossings, is as follows:

When one car can not be furnished to accommodate shipments of light and bulky articles provided for under classification or as shown herein, either in straight or mixed carloads, two cars may be used at the highest minimum weight and the lowest rate provided for one car.

NOTE.—The above will not apply when the combined measurement of the cars furnished is in excess of 80 feet in length.

On certain commodities from Indianapolis the two-for-one rule applies by virtue of Rule 5-C of the Official Classification:

When a lot of freight in packages, pieces, or parts (not bulk freight—see Rule 8-A) shipped at one time by one consignor to one consignee or destination, whether loaded by a consignor or carrier, makes a part carload in excess of full carload, or carloads, the carload minimum weight shall be charged for each

full carload, unless actual weight be greater than the minimum weight, when actual weight shall be charged, and the part carload remaining over shall be charged at actual weight and carload rate unless otherwise specified in the classification.

This rule is restricted to commodities of which 20,000 pounds or more may be loaded in a car, and does not apply on furniture, vehicles, chairs, and other light and bulky articles. Indianapolis asks for its application on these commodities.

From Chicago the Western Classification rule applies, to wit:

**EXCESS OR LESS THAN CARLOADS.**

When the minimum carload weight or more of one article is shipped in one day by one consignor to one consignee, covered by one bill of lading, the established rate for a carload shall apply on the entire lot, although it may be less than two or more full carload lots. The first car or cars must be loaded to their full capacity and are subject to established rules for minimum weights; the actual weight of the balance, provided it is loaded in a box car, to be charged for at the carload rate, reference being made on the waybill for the balance of the lot to the waybill for the full carload or loads. This is intended to apply on all articles that are classified in both less-than-carloads and in carloads in the numbered and lettered classes except on carload freight taking minimum weights of less than 30,000 pounds, carload freight subject to Rule 6-B, and shipments of agricultural implements (including hand implements), vehicles, parts of vehicles, live stock, furniture, lumber, articles taking lumber rates, sash, doors, blinds, scrap iron and junk, and all shipments any part of which is loaded in refrigerator or tank cars. In such cases excess lots will be charged for at less-than-carload rates.

It will be noted this rule does not apply on light and bulky articles. However, under exceptions published by individual roads to the Western Classification, Chicago is given the benefit of the two-for-one rule on such articles, and complainant asks that similar exceptions be made to permit the application of the rule on shipments from Indianapolis.

Rule 6-B of the Western Classification specifies light and bulky articles, and provides as follows:

Minimum weights provided in classifications will apply on all sizes of cars, except that premium and deduction charges will be applied to light and bulky articles designated by note, whether loaded in box cars or on open cars.

Upon such light and bulky articles the standard car will be 36 feet, inside measurement, 3 per cent per foot to be added for each foot in excess of 36 feet, and 3 per cent per foot to be deducted for each foot less than 36 feet, with a minimum of 91 per cent, all percentages to be based on inside measurements. In applying the premium and deduction charges, fractions of a foot, 6 inches or less, to be disregarded.

See table of percentages and minimum weights on page 7.

Whether or not an article is classified as "light and bulky" is determined by reference to the table of percentages and minimum weights referred to in the above rule.

Chicago & Northwestern Railway tariff G. F. C. 5736, I. C. C. 571, provides under the caption "Freight loaded in long cars where short cars are ordered:"

The following rule will apply between all stations on the C. & N. W.; also between C. & N. W. stations and points on or reached by lines named above in Western Trunk Line territory covered by through tariff:

Where cars of certain dimensions in service of this company are ordered by shippers and we are unable to furnish the same, make a notation to this effect on your waybilling and waybill at the minimum weight applicable to the size car ordered.

This rule (which has also been adopted in substance by several other lines) follows the suggestion of the Commission appearing in Tariff Circular 15-A, Rule 71.

Another rule substantially conforming to that recommended by the Commission provides that—

Where by reason of convenience or circumstances wholly resting with the railroads they furnish a larger car than ordered, charges will be assessed on the minimum prescribed for the size of car ordered.

Complainants contend that the application of the two-for-one rule is in no way dependent upon the size of the car ordered by the shipper, i. e., where a man offers a shipment consisting of 30,000 pounds of vehicles (vehicles being subject to a minimum of 22,720 pounds when loaded in a 50-foot car) the carriers will furnish a second car for his accommodation, provided the combined measurement of the 2 cars used is not in excess of 80 feet. Defendants' counsel asserts that this application is not permissible; that the use of a second car is dependent upon the inability of the carrier to furnish a larger car ordered, and that practical construction makes the rule unambiguous in this connection. However, we are unable to see wherein the terminology of the rule restricts it in any such manner. The publication of separate rules, as above set forth, which by express language are limited in their application by the conditions upon which it is claimed the general rule is dependent, would seem to negative such an inference, and no testimony was offered by the carriers tending to show that the use of a second car is allowed only when a larger car is ordered and can not be furnished.

Where varying minima and rates are provided for the same commodity, such as furniture, 2 cars may be used, subject to the highest minimum and lowest rate named to apply on that commodity. If in such case a shipment is offered consisting of 20,000 pounds, and 1 car will not contain more than 15,000 pounds, another car is furnished, and the whole shipment takes the carload rate applicable on the 20,000-pound minimum, provided that be the highest minimum named on that commodity.

The rule, while not available out of Indianapolis, is available beyond the junction point in territory governed by the Western Classification, so that up to the junction Indianapolis pays the actual minimum weight on the 2 cars used, and from the junction to final destination the same rate and rule are available as on similar shipments from Chicago.

The rate of 24 cents per 100 pounds on ladders from Indianapolis applies on minima graduated from 12,000 to 21,600 pounds, whereas the Chicago rate of 16.6 cents per 100 pounds to the Mississippi River is applicable under the Illinois Classification on a minimum of 12,000 pounds in cars of any length.

The Illinois Central has recently extended the two-for-one rule to Indianapolis. Prior to the application of this rule, it is claimed Indianapolis was unable to sell ladders in the St. Louis market to any considerable extent because the small margin of profit to be derived under any circumstances from their sale would not permit of the absorption of the difference between the freight charges from Indianapolis and Chicago.

The minimum prescribed by the Official Classification on ladders loaded in 36-foot cars is 12,000 pounds, whereas complainant maintains that such cars will contain only 7,000 pounds. The loading weight of two 36-foot cars from Indianapolis is their actual capacity, or 14,000 pounds. The Indianapolis shipper is therefore charged for 10,000 pounds in excess of the capacity of 2 such cars at the rate of 24 cents to the Mississippi River, and for 2,000 pounds at 27 cents per 100 pounds beyond, or \$29.40. The total charge on actual weight of 14,000 pounds of ladders from Indianapolis (assessed on the basis of 24,000 pounds to the Mississippi River and 16,000 pounds beyond by virtue of the minimum rules) is \$100.80. The total charge from Chicago, at 32 cents per 100 pounds, on a minimum of 16,000 pounds, which is susceptible of loading under the application of the two-for-one rule, is \$51.20.

The loading weight of ladders in two 40-foot cars is 16,000 pounds, the minimum applicable on each such car from Indianapolis is 15,000 pounds, and the total charge is \$120.38, as against \$57.34 from Chicago. On 2 cars, one 45 feet in length, loading weight 10,000 pounds, and the other 35 feet in length, loading weight 7,000 pounds, total charge from Indianapolis \$131.18, as against \$65.02 from Chicago.

From Chicago to Missouri River points the minimum on ladders under the Western Classification is 17,920 pounds for 40-foot cars and 22,720 pounds for 50-foot cars. Any excess over the loading capacity of the cars goes forward at the carload rate under the application of the two-for-one rule.

The Illinois Central, which is not a defendant in this case and not an initial carrier from Indianapolis except over the Indianapolis Southern, which is operated independently, extends the two-for-one rule to Indianapolis. The charges on ladders from Indianapolis to points which can be reached by this route; also charges on similar shipments from Chicago, are as follows:

	From Indianapolis.	From Chicago.
On 14,000 pounds .....	\$76.80	\$51.20
On 16,000 pounds .....	86.78	57.34
On 17,000 pounds .....	102.14	65.02

St. Paul, Minn., and Davenport, Iowa, as well as Chicago, are strong competitors of Indianapolis in the shipment of ladders to St. Louis. The distance from St. Paul to St. Louis is 576 miles; from Chicago, 284; from Davenport, 255; and from Indianapolis, 242.

On 17,000 pounds of ladders, loaded in two 40-foot cars, at a rate of 26 cents per 100 pounds, applied on the minimum of 17,920 pounds prescribed for 40-foot cars, the charge from St. Paul to St. Louis is \$46.59; on a similar shipment from Chicago, at 17.1 cents per 100, minimum 12,000 pounds in cars of any length, \$29.07; and from Davenport, at 15.9 cents per 100, minimum 12,000 pounds for cars of any length, \$27.03. The two-for-one rule is available on such shipments from each of these three places.

From Indianapolis, where the two-for-one rule is not available, the minimum prescribed for 50-foot cars is 21,600 pounds, whereas their loading capacity is claimed to be but 12,000 pounds, and any excess is charged for at less-than-carload rates. Thus on a shipment consisting of 17,000 pounds of ladders from Indianapolis the carload rate of 24 cents would be charged on the minimum of 21,600 pounds prescribed for a 50-foot car, \$51.84, and the less-than-carload rate of 38 cents on the 5,000 pounds excess above 12,000 pounds (the loading capacity of the car), or \$19, making the total charges on 17,000 pounds \$70.84.

It will be seen that on 17,000 pounds of ladders Indianapolis pays \$24.25 more in transportation charges to St. Louis than St. Paul, \$41.77 more than Chicago, and \$43.81 more than Davenport.

The average loading weight of vehicles in a 36-foot car is 10,000 pounds. Under exceptions published to the Official Classification the minimum for such shipments is 14,000 pounds, and charges are assessed on that minimum from Indianapolis for each 36-foot car used, so that on a shipment of 20,000 pounds of vehicles loaded in two 36-foot cars charges up to the Mississippi River under the rate of

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16½ cents per 100 pounds amount to \$46.20, and from the Mississippi River at the rate of 24½ cents, minimum 20,000 pounds under the Western Classification, the charge to Kansas City amounts to \$49, or a total from Indianapolis to Kansas City of \$95.20, as against \$64 from Chicago, assessed at a through rate of 32 cents per 100 pounds on Western Classification minimum of 20,000 pounds, subject to the two-for-one rule.

The loading weight of vehicles in a 40-foot car is 12,500 pounds. Under exceptions published to the Official Classification the minimum is 18,200 pounds. A shipment loaded in two 40-foot cars from Indianapolis to the Mississippi River crossings would be subject to a minimum of 36,400 pounds, which, at the rate of 16½ cents per 100 pounds, would make the charge up to the river \$60.06. The Western Classification minimum on such a shipment beyond the river is 25,000 pounds (subject to the two-for-one rule), which, at 24½ cents thence to Kansas City, would result in additional charges of \$61.25, or a total from Indianapolis to Kansas City of \$121.31, as against \$80 from Chicago.

The loading capacity of a 45-foot car is 16,000 pounds of vehicles. The minimum is 19,600. A shipment from Indianapolis, consisting of 26,000 pounds, loaded in 2 cars, one 45 feet and the other 35 feet in length, would be subject, under exceptions to the Official Classification, to a minimum of 33,600 pounds, at 16½ cents per 100 pounds to the Mississippi River crossings, or \$55.44. From the Mississippi River to Kansas City this shipment would be charged 24½ cents per 100 pounds on actual weight, or \$63.70, making a total from Indianapolis to Kansas City of \$119.14, as against \$83.20 on a similar shipment from Chicago.

The minimum on vehicles loaded in a 50-foot car from Indianapolis to Chicago is 21,000 pounds. The minimum from Chicago for cars of any length, which is applied in connection with the two-for-one rule, is 20,000 pounds. About 9,000 pounds of vehicles can be loaded in a 36-foot car destined to the northwest, and 18,000 pounds in a 50-foot car. To the southeast and southwest it is possible to load as much as 20,000 pounds in a 50-foot car, heavier vehicles being shipped to that territory. Under the two-for-one rule the Chicago shipper can use two 40-foot cars, and these will contain more than the minimum prescribed for a 50-foot car.

To points which can be reached by the Indianapolis Southern-Illinois Central route the two-for-one rule is available from Indianapolis, and the application of this rule results in a modification of the charges. For example, on a shipment of vehicles loaded in 2 36-foot cars, consisting of 20,000 pounds, a total charge of \$81 is assessable; on 25,000 pounds, loaded in two 40-foot cars, \$101.25; on 26,000 pounds, loaded in one 45-foot and one 35-foot car, \$105.30.



The loading weight of chairs in a 36-foot car is 8,500 pounds. Under the rate of 55½ cents formerly applied from Indianapolis to East St. Louis no minimum was prescribed in the Official Classification, hence on 17,000 pounds of chairs, loaded in two 36-foot cars, charges would be assessed on actual weight, \$94.35. At the commodity rate of 22½ cents per 100, minimum 20,000 pounds, from the Mississippi River to Kansas City, the charge amounts to \$45. Thus the total charges from Indianapolis to Kansas City on 17,000 pounds of chairs, loaded in two 36-foot cars, under the former adjustment were \$139.35, as against \$60 from Chicago on a minimum of 20,000 pounds at 30 cents per 100 pounds; on 21,000 pounds, loaded in 2 40-foot cars, \$163.80, as against \$63 from Chicago, and on 18,000 pounds, loaded in one 45-foot and one 35-foot car, \$144.90, as against \$60 from Chicago. These comparisons are made as of the time of filing of complaint, April 26, 1907.

Under the reduced rate of 32½ cents per 100, applying on chairs from Indianapolis to Mississippi River crossings, effective August 1, 1907, the total charges from Indianapolis to Kansas City are as follows:

On two 36-foot cars.....	\$110. 00
On two 40-foot cars.....	128. 50
On one 45-foot and one 35-foot car.....	131. 12

Somewhat lower charges are available from Indianapolis via Peoria, as follows:

On a shipment consisting of 17,000 pounds, loaded in two 36-foot cars, rate to Peoria 27 cents per 100, minimum 20,000 pounds, \$54; beyond Peoria, 29½ cents, minimum 17,000 pounds, \$50.15, or total charges from Indianapolis to Kansas City via Peoria of \$104.15, as against \$54.40 from Chicago. On a shipment of 21,000 pounds, loaded in two 40-foot cars, the rate of 27 cents to Peoria, Official Classification minimum 25,000 pounds, results in a charge of \$67.50, and from Peoria to Kansas City the commodity rate of 26½ cents on minimum of 21,000 pounds, applying under the Western Classification on any length car, results in a charge of \$55.12, or a total from Indianapolis to Kansas City of \$122.62, as against \$63 from Chicago, assessed under the rate of 30 cents per 100 pounds on a minimum of 21,000 pounds. On 2 cars, one 45 feet in length and the other 35 feet, loaded with a shipment of 18,000 pounds of chairs, the rate of 27 cents to Peoria applied on Official Classification minimum of 26,500 pounds results in a charge of \$71.55, which, added to the charge of \$52.50, assessed under the commodity rate of 26½ cents, minimum 20,000 pounds, Peoria to Kansas City, results in a total of \$124.05, as against \$60 from Chicago, assessed on the basis of 30 cents per 100 pounds, 20,000 pounds minimum, any length car.

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Via the Indianapolis Southern-Illinois Central route, which extends the two-for-one rule to Indianapolis, the total charge on 17,000 pounds of chairs to Kansas City, loaded in two 36-foot cars, at a rate of  $32\frac{1}{2}$  cents per 100, is \$100.25, as against \$60 on a similar shipment from Chicago; on 21,000 pounds, loaded in two 40-foot cars, total charge from Indianapolis, \$115.50, as against \$63 from Chicago; and on 2 cars, one 45 feet and the other 35 feet in length, loaded with 18,000 pounds, total charge from Indianapolis \$103.50, and from Chicago \$60.

From Indianapolis to Kansas City on 20,000 pounds of furniture, loaded in two 36-foot cars, under the rate of  $32\frac{1}{2}$  cents per 100 pounds to the Mississippi River and  $22\frac{1}{2}$  cents beyond, the total charge amounts to \$110, as against \$60 from Chicago on a similar shipment at the rate of 30 cents per 100 pounds; on 24,000 pounds, loaded in two 40-foot cars, at  $32\frac{1}{2}$  cents per 100, Official Classification minimum 25,000 pounds, to the Mississippi River, \$81.25, plus \$54 beyond, total charges \$135.25, as against \$72 from Chicago; and on 26,500 pounds loaded in 2 cars, one 45 feet and the other 35 feet in length, total charges \$145.75 from Indianapolis, as against \$79.50 from Chicago.

Under the commodity rate of  $21\frac{1}{2}$  cents per 100 pounds, established July 15, 1907, to apply from Indianapolis to Peoria, the charge on 20,000 pounds of furniture loaded in two 36-foot cars amounts to \$51.60 (based on the minimum of 24,000 pounds, incident to the application of the  $21\frac{1}{2}$ -cent rate), which added to the charge of \$52.50 from Peoria to Kansas City (applied at the rate of  $26\frac{1}{2}$  cents on the Western Classification minimum of 20,000 pounds), results in total charges of \$104.10 from Indianapolis to Kansas City, as against \$60 from Chicago. On 24,000 pounds, loaded in two 40-foot cars, subject to a minimum of 30,000 pounds, at  $21\frac{1}{2}$  cents per 100, the charge to Peoria is \$64.50, which added to a charge at the rate of  $26\frac{1}{2}$  cents per 100 on 24,000 pounds (minimum prescribed by the Western Classification), amounting to \$63, makes the total charges from Indianapolis to Kansas City \$127.50, as against \$72 from Chicago. Using 2 cars, one 45 feet and the other 35 feet in length, loading weight 26,500 pounds, at  $21\frac{1}{2}$  cents per 100 on the commodity minimum of 31,800 pounds, to Peoria, \$68.37, plus a charge beyond at the rate of  $26\frac{1}{2}$  cents, Western Classification minimum 26,500 pounds, \$69.56, results in total charges, Indianapolis to Kansas City, of \$137.93, as against \$79.50 from Chicago.

Furniture dealers in the Missouri River district and at points west thereof buy largely in mixed carloads. Each furniture factory makes a full line of goods, but all of one grade, so that when the western buyer desires to purchase a mixed carload he must patronize a number of factories, and Chicago, having more favorable rates and

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minima, and also the two-for-one rule, has a competitive advantage over Indianapolis in this western country. Thus it is claimed Indianapolis's furniture trade in the Missouri River district is limited to straight-carload shipments, for the reason that mixed carloads can be had from Chicago at a lower rate applied on actual weight under the two-for-one rule. Indianapolis has the privilege of mixing carloads, but can not load the minimum, and must pay the less-than-carload rate on any excess. The minimum on a mixed carload in a 36-foot car is 12,000 pounds.

The minimum from Indianapolis on iron beds loaded in a 36-foot car, subject to Rule 27, is 12,000 pounds, and beyond the Mississippi River 30,000; on a 50-foot car 21,600 pounds to the Mississippi River and 30,000 beyond, the rate being 46 cents, and from Chicago 30,000 pounds at 27 cents per 100.

At the hearing, counsel for the defendants conceded that the minima prescribed on stepladders and certain other light and bulky articles are greater than can be loaded in the cars, but made the assertion that this is the only practicable method of fixing carload charges upon a fairly compensatory basis, since the roads can not afford to carry such articles at actual weight under the regular classification ratings, and in order to obviate the necessity of publishing commodity rates to meet the exigencies of each particular class of traffic, varying in bulk and weight, they provide by the minima for what they consider a proper adjustment. In other words, if the same rate per 100 pounds is to be applied on the various articles, it is contended that the charges must be regulated by varying minima, and on the extremely light and bulky articles charges must be assessed on higher minima than it might be possible to load in the cars. Were a minimum prescribed, which in all cases is susceptible of being loaded, it would follow that the rate itself must be advanced on light and bulky articles in order that each car might earn a fair measure of revenue, thus making impossible the use of the classification rates and necessitating the publication of numerous special rates varying with the bulk and loading possibilities of each class of freight.

On the other hand, Mr. James P. Orr, general freight agent of the Pennsylvania lines west of Pittsburg, and a member of the Official Classification Committee, testified that there is no attempt made to regulate charges by prescribing minima in excess of loading capacity; that while there are frequent protests from shippers that the minima can not be loaded, 75 per cent of the light and bulky articles will load to the minima; and that the physical capacity of cars is accurately ascertained and applied. Certain articles of the same class are susceptible of different loading—95 per cent of a given article may load to the minimum and 5 per cent, consisting of a different variety

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or grade of the same article, may not. In such case it would be unfair to the railroads to make the rate in accordance with the lower minimum on the 5 per cent, and unfair to shippers of 95 per cent of the article to reduce the minimum and increase the rate to conform to the requirements of the smaller proportion. Mr. Orr illustrated this proposition by referring to an article known as "metal lathing," consisting of extended or perforated metal, over which plaster is placed, and upon which the classification minimum is 36,000 pounds and the rate fifth class. A certain manufacturer has produced a metal lath very much lighter than all others, which can only be loaded up to 12,000 pounds. This particular manufacturer therefore asks for a reduction of the minimum from 36,000 to 12,000 pounds. If the classification rating were to be advanced it would be unjust to the man who can load 36,000 pounds, and if the minimum were reduced to 12,000 pounds and the same rate applied as on a 36,000-pound carload the traffic might be unremunerative to the railroad.

There is no minimum lower than 10,000 pounds under the Official Classification, since, it is claimed by defendants, it is not possible to fix a carload rate on any lower minimum that would prove satisfactory to the public. It is conceded that there are certain light and bulky articles which will not load more than six to eight thousand pounds in a standard 36-foot car. However, in most cases the shipper desires the use of an entire car in order that his property may move through to destination under seals, and in order that he may have the privilege of loading and his consignee be permitted to unload on private sidings. Hence, as a rule, shippers prefer to pay the carload rate on a higher minimum than can be loaded, rather than ship less-than-carload quantities mixed with the property of other shippers.

At the present time the standard car is 36 feet long, 8 feet high, and 8 feet 6 inches wide, with a capacity of 2,448 cubic feet. Formerly there was no standard car, the car most generally used being 28 feet in length. The furniture and vehicles shipped during the period when smaller equipment was used were much heavier and the minima were fixed on the capacity of the smaller cars, all minima being greater than those of to-day. Minima so prescribed applied on any size car used. The minima were readjusted on account of the building of furniture cars. The application under the old practice of one minimum on any size car was objectionable because owing to the physical condition of some railroads they could not use the larger cars, and was also objectionable to shippers because they could not always procure large cars. This condition brought about the adoption of the standard car upon which the minima were based and then graded up for any increase in the cubical capacity. The amount of

the rate depends in large measure on the weight which can be loaded in a car, and when the minima were reduced the rates were increased.

The Official Classification lines have never considered the adoption of the two-for-one rule, because in their opinion it is not equitable or just and is subject to manipulation. Furthermore, in times of car shortage, when it is most called into use and for which emergencies it was especially designed, the operation of the rule tends to increase the number of cars belonging to those lines sent off their rails into other territories, thus entailing hardship on their shippers and also financial loss to the railroads. The rule also gives to every dishonest shipper an advantage over every honest one, in that the former may order a large car with knowledge that it can not be furnished, and thus secure the application of the rule when it is not proper or necessary that it be called into operation. The two-for-one rule was injected into Official Classification territory by the overlapping of the Western Classification. It is not applied by any Central Freight Association road to all territory, but is confined to points at which they meet the competition of the western lines operating under the Western Classification.

Manufactured articles move in large volume westward over the western lines, and not in both directions—east and west—as in Central Freight Association and Official Classification territories. The western lines handle the larger part of their freight eastward, consisting of cotton from the southwest, grain from Oklahoma, and lumber from the northwest, so that the operation of the two-for-one rule on manufactured articles moving from the east to the west serves to send cars westward loaded with furniture and other manufactured articles to points where such cars are needed for return movement eastward with lumber, grain, cotton, etc. By reason of this condition the western lines, it is contended, can just as well afford to haul out 2 cars, one loaded and the other partially filled, as to forward the traffic west in one full car.

Prior to the time of the car famine in 1907 there was no difficulty experienced in procuring 50-foot cars, and the two-for-one rule was not then so essential. This rule has been available from Chicago since the latter part of 1906.

It is evident from the facts as above stated that the application of the two-for-one rule from Chicago and its nonapplication from Indianapolis results in such great disparities between the freight charges from these respective points as to work an unjust discrimination against the place last mentioned. The Commission, however, having in mind the abuses and improper manipulation which the rule makes possible, hesitates to extend its application, and an order to that effect will only be made in the event it is found impossible to

correct the discrimination against Indianapolis in some other manner. This, we think, can be done either by the adoption of the rule at Indianapolis with such restrictions or modifications as will prevent improper manipulation and abuses resulting therefrom, and which when made clear and unambiguous will make those violating the same liable to prosecution under the law, or else by a readjustment of the minimum weights on the various articles referred to in this complaint so that they will conform approximately to the actual loading capacity of cars. We regard it as improper for carriers to regulate the amount of freight charges by prescribing minima which manifestly can not be loaded.

This feature of the complaint will be retained, and if at the end of three months from this time the carriers have been unable to remove the cause of complaint the Commission will then make such order as may appear necessary and proper.

#### CLASSIFICATION OF CASTINGS, JAPANNE.

Castings, not otherwise specified, carloads, take fifth class rates in Official Classification territory; less than carloads, fourth class. However, under note 5 to the classification, it is provided that such rates will not apply on castings, japanned, but that such shipments shall be subject to the class rates provided on hardware, which are fourth class, carloads, and third class, less than carloads. The application of the higher ratings on castings which have passed through the japanning process constitutes the basis of the complaint.

The process of japanning consists in dipping the casting into a black solution made from asphaltum, which gives an outside surface to prevent rusting. This process does not enhance the value of the castings except to the extent of the actual cost of japanning, which is approximately one-fifth of a cent per pound, or \$60 per carload of 30,000 pounds.

Prior to 1906, and while Note 5 was in effect, it was the practice of the roads to apply on pump and gray iron castings, japanned, fifth class rates, carload, and fourth class, less-than-carload. After the passage of the amended act to regulate commerce this practice was discontinued and the classification rules were literally enforced, so that thereafter the higher ratings, in accordance with Note 5 to the classification, were applied.

Note 5 to the Official Classification, rating on castings, provides:

The rates provided hereunder for any article of iron or steel manufacture will apply on the article whether finished or unfinished, except that rough castings and forgings not advanced in the stage of manufacture beyond the casting or forging process, and requiring further work on them before becoming a finished article, shall be subject to the rates for castings and forgings, n. o. s.

The casting process referred to above will include tumbling, remodeling the cinder heads, testing the chill, and any other work done on the casting advancing the stage of manufacture beyond the casting process. The above rule, however, will not apply in the case of articles for which a specific rate is provided, when unfinished. In such cases, such specific rate will apply on any shipment of the unfinished article. The casting and forging, n. o. s., rating will also apply on any article of iron or steel manufacture not specifically provided for in the classification, when shipped in the rough; that is, when not advanced in the stage of manufacture beyond the casting or forging process, and not put together, fitted, painted, japanned, bronzed, coppered, acid coppered, plated, tinned, or galvanized. Otherwise such article shall be subject to the rating for hardware n. o. s.

The resulting difference in charges as between the old and new application of tariffs on a carload of 30,000 pounds is \$9 to St. Louis and \$7.50 to East St. Louis. The increases in rates to other important destination points to which Indianapolis concerns ship are shown as follows:

*Pump castings and gray iron castings, carloads and L. O. L.—Increase in rates and amount of freight from Indianapolis.*

	Carloads.				Less than carloads.			
	Former rate fifth class, per cwt.	Present rate fourth class, per cwt.	Percentage of increase in rates.	Increase in freight per car 18 tons.	Former rate fourth class, per cwt.	Present rate third class, per cwt.	Percentage of increase in rates.	Increase in freight per ton.
	<i>Cents.</i>	<i>Cents.</i>			<i>Cents.</i>	<i>Cents.</i>		
Cleveland, Ohio ....	14½	17	17.2	\$9.00	17	25	47.0	\$1.60
Columbus, Ohio ....	11½	14½	26.1	10.80	14½	22	51.7	1.50
Detroit, Mich. ....	14	16½	17.8	9.00	16½	24½	49.4	1.60
Toledo, Ohio. ....	13	16	23.0	10.80	16	23	43.7	1.40
Cincinnati, Ohio ....	9½	12½	31.5	10.80	12½	19½	56.0	1.40
Louisville, Ky. ....	10½	13½	28.5	10.80	13½	20½	51.8	1.40
Evansville, Ind. ....	11½	14	21.7	9.00	14	21½	53.5	1.50
St. Louis, Mo. ....	13½	16½	22	10.80	16½	24	45.5	1.50
Peoria, Ill. ....	11½	14	21.7	9.00	14	21½	53.5	1.50
Chicago, Ill. ....	11½	14	21.7	9.00	14	21½	53.5	1.50
Buffalo, N. Y. ....	17	19½	14.7	9.00	19½	28½	45.0	1.80
Pittsburg, Pa. ....	17	19½	14.7	9.00	19½	28½	45.0	1.80

Gray iron castings, japanned, are rated the same as castings, not otherwise specified, under the Southern and Western Classifications, and the Western Classification makes specific provision that castings may be japanned to prevent rusting, without the application of the higher ratings.

In the latter part of 1907, the Official Classification was changed to apply fifth class rating on chain, pump, and washing machine castings shipped in packages. However, pump and gray iron castings are shipped largely in bulk, carloads, and therefore the package rate would not serve.

Washing-machine castings, japanned, are now carried at fifth class rates in carload shipments, for the reason that washing machines

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take fifth class rates, and the castings, being parts thereof, are rated the same. Sewing-machine stand castings, japanned, in carloads, are also rated fifth class under the Official Classification. The fifth class rates apply on pump and gray iron castings only when such articles are shipped in boxes or barrels.

The carriers claim that it is very difficult to draw the line of demarcation between castings and hardware in naming rates to apply thereon. After much investigation, it was found that the safest, plainest, and only practicable line of demarcation was to consider an article as a casting or forging before it was treated with paint, japanning or a coating of any kind, and after it had been subjected to such a process to consider it hardware.

The exception to this rule in favor of sewing-machine stand castings was due to the fact that this commodity moved in large volume between specific points; that is, between points where the casting was manufactured and certain other designated points where the complete machines were manufactured. Because of this condition it was deemed practicable to except this commodity from the general rule, and to provide a similar rating to that applied on washing-machine castings.

Chain-pump castings, japanned, are accorded the fifth class rating when shipped in packages; this method of shipment, it is claimed, being necessary on account of risk of breakage incident to their shipment in bulk. Sewing-machine stand and washing-machine castings are also required to be cased in order to have the benefit of the lower ratings. The complete pumps also take fifth class ratings. These articles, however, are not made and used in every town, but are produced at specified points and shipped to specified points in the same manner as are sewing and washing machine castings. Gray iron castings, on the contrary, are general articles of shipment throughout Official Classification territory.

In the view of the Commission the material increases in rates on pump and gray iron castings, japanned, are unreasonable, and no reason appears why these articles should not take fifth class ratings when shipped in carloads, and fourth class in less than carloads. These ratings were applied during a long period, and no contention is made that the rates so charged were not remunerative to the carriers. The advance results solely from conformance with a rule which follows an arbitrary line of demarcation for the convenience of the carriers in applying a general classification basis. This does not constitute a sound transportation reason for such marked advances in rates and upon all the facts before us no other conditions appear as a warrant therefor.



No. 1837.

HARTMAN FURNITURE &amp; CARPET COMPANY

v.

WISCONSIN CENTRAL RAILWAY COMPANY ET AL.

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*Submitted February 3, 1909. Decided March 8, 1909.*

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The through fifth class rate of 33 cents per 100 pounds formerly applied by the defendants on carload shipments of stoves from Fremont, Ohio, via Chicago, to Minneapolis, Minn., found unreasonable and reparation awarded complainant on the basis of the present through commodity rate of 29½ cents per 100 pounds.

*Leonard Brisley* for complainant.

*Henry C. Starr* and *Walter D. Corrigan* for Wisconsin Central Railway Company.

*Glennon, Cary, Walker & Howe* for Lake Shore & Michigan Southern Railway Company.

## REPORT OF THE COMMISSION.

**HARLAN, Commissioner:**

In this proceeding the Hartman Furniture & Carpet Company, engaged in a general retail business in the city of Minneapolis, in the state of Minnesota, complains of the rate collected by the defendants on four carloads of stoves weighing in the aggregate 108,600 pounds, which were shipped to it from Fremont, in the state of Ohio, on October 4, 19, 24, and 27, 1906. The freight charges were assessed on the basis of the through fifth class rate of 33 cents per 100 pounds upon a minimum carload weight of 24,000 pounds, and amounted to a total of \$358.38. At the time the shipments moved the local rates into and out of Chicago yielded a through combination rate of 28 cents per 100 pounds. The tariff naming the through class rate of 33 cents per 100 pounds also provided that the rates therein established should not exceed the sum of the local rates, but this provision, as well as others of similar import, had then been declared unlawful by the Commission, and in the collection of the freight charges on these shipments was disregarded by the defendants. In other words, the only lawful rate then in effect was the through class rate.

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Recognizing the general principle frequently announced by the Commission that a through rate in excess of the sum of the local rates was presumptively an excessive and therefore an unlawful rate, the defendants on December 19, 1906, attempted to establish a through rate of 28 cents per 100 pounds, being the sum of the local rates; but through some inadvertence all the requirements with respect to the making and filing of tariffs affecting changes in rates were not complied with, and consequently the rate did not then become effective. But on July 8, 1907, a through commodity rate of 28 cents per 100 pounds was established between the points in question, and that was the rate in effect when the petition was filed. On December 15 of the same year the defendants, by a tariff duly filed with the Commission, increased the rate to 29½ cents per 100 pounds, this rate, as the record discloses, being the sum of the local rates in effect into and out of Chicago at that time.

Upon the suggestion of the Commission the parties to the proceeding have agreed that the issue may be adjusted on the theory that the rate charged was unreasonable and excessive because it exceeded the sum of the local rates, but that the reparation to be awarded is to be based upon the present 29½-cent rate.

The Wisconsin Central, in its answer, pleads the statute of limitations, and suggests that the claim is now barred because it was not filed with the Commission until after two years from the date of the completion of the shipments in question. The formal complaint was filed on November 7, 1908, and the plea of that defendant would be good were it not for the fact that the claim was informally presented to the Commission on February 28, 1908, and this, as the Commission has held, is sufficient to stop the running of the statute. *Beekman Lumber Co. v. St. L., I. M. & S. Ry. Co. et al.*, 15 I. C. C. Rep., 274; *Folmer & Co. v. G. N. Ry. Co. et al.*, 15 I. C. C. Rep., 33.

We therefore find that the complainant is entitled by way of reparation on the shipments in question to the sum of \$38.01, with interest thereon at the rate of 6 per cent per annum from the date the excessive charges were collected. We further find that the carload rate on stoves between the points in question on the minimum of 24,000 pounds ought not for the future to exceed the present rate of 29½ cents.

An order will be entered in accordance with these conclusions.

15 I. C. C. Rep.

No. 1459.

PLEASANT HILL LUMBER COMPANY

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

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Submitted February 25, 1909. Decided March 2, 1909.

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Complainant shipped 2 carloads of sawmill machinery from Ogemaw, Ark., to Sodus, La., paying the established rate of defendants, and filed complaint for reparation, alleging said rate to be unreasonable. Upon assignment of the case for hearing complainant failed to appear and prosecute the proceedings, and it appearing that more than two years had intervened between the date on which freight charges were paid and date on which claim was presented to the Commission, the complaint is dismissed.

*McManamy, Thorn & Larish* for complainant.

*S. H. West* for St. Louis Southwestern Railway Company

*Thomas J. Freeman* for Texas & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint, filed September 9, 1907, asks reparation on account of charges for the transportation by defendants of 2 carloads of sawmill machinery from Ogemaw, Ark., to Sodus, La., shipped on May 24 and 25, 1905. It is alleged that the rate charged was unreasonable and unduly discriminatory. The defendants deny this allegation and aver that the charges were collected more than two years before the complaint was presented to the Commission, and therefore it has no jurisdiction of the claim for reparation.

The case was assigned for hearing, and after due notice to the parties, was called, whereupon the complainant failed to appear or submit evidence. The defendants appeared and moved to dismiss the proceedings on the ground that the Commission has no jurisdiction of the claim, for the reason above stated. The record at the date of hearing did not show conclusively that two years had intervened after the payment of the freight charges and before the filing of complaint. The case was not dismissed but held open for further inquiry upon that point. An affidavit has since been filed by the defendants to the effect that the freight charges were collected on June 6, 1905, and the

15 I. C. C. Rep.

complainant now admits that more than two years had intervened between the date of payment of the freight charges and the date of presentation of the complaint, and asks that the case be dismissed.

It is evident that the allegation of the unreasonableness and discriminatory character of the rate involved was made solely in support of the claim for reparation. It is our conclusion that the complaint should be dismissed upon the motion of defendants. An order will be entered to this effect.

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No. 1570.

WAKITA COAL & LUMBER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Decided March 8, 1909.*

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Petition for reparation based on alleged misrouting of a carload of lumber from Ashland, Tex., to Wakita, Okla., dismissed, because of failure of complainant to appear at the hearing.

No appearance for complainant.

*J. L. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

*R. W. Hockaday* for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This case involves a claim for reparation because of alleged misrouting of a carload of lumber from Ashland, Tex., to Wakita, Okla.

Following the decision in the case of *Taylor v. Missouri Pacific Ry. Co.*, 15 I. C. C. Rep., 165, this case is dismissed for lack of prosecution. No question is involved, except one of reparation, and the complainant not appearing at the hearing to prove the movement of the freight the Commission has no evidence before it upon which to base an order.

15 I. C. C. Rep.

No. 1388.

## MONROE PROGRESSIVE LEAGUE

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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Submitted February 5, 1908. Decided March 8, 1909.

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1. Complaint attacks as unreasonable and unjustly discriminatory against Monroe the general adjustment of rates to Monroe from St. Louis and defined territories north, northeast, and northwest thereof. The adjustments of rates from Memphis and from Natchez which are complained of are admitted to be unreasonable, and adjustments of same are under way.
2. Rates from St. Louis and points basing thereon to New Orleans, Natchez, Vicksburg, and other Mississippi River points are controlled by water competition, and, therefore, the fact that such rates are lower than rates from the same points of origin to Monroe does not unjustly discriminate against Monroe.
3. Rates from the north to Monroe can not reasonably exceed in any instance the combination on Vicksburg or New Orleans, whichever may make lower.
4. The rate adjustment which groups Monroe, Alexandria, and Shreveport under common rates is not unreasonable, and not unjustly discriminatory against Monroe.

*W. M. Lewin, John B. Daish, and E. W. Anderson* for complainant.  
*Martin L. Clardy and James C. Jeffery* for St. Louis, Iron Mountain & Southern Railway Company.

*Sidney F. Andrews* for Alabama & Vicksburg Railway Company and Vicksburg, Shreveport & Pacific Railway Company.

*M. L. Scovell and Emerson Bentley* for Shreveport Traffic Association, intervener.

*M. L. Alexander, J. H. Overton, and Emerson Bentley* for Alexandria Progressive League, intervener.

## REPORT OF THE COMMISSION.

CLARK, Commissioner:

This complaint is brought by the Monroe Progressive League, a voluntary organization of business men in Monroe, La. The defendants are the St. Louis, Iron Mountain & Southern Railway Company, which has lines of railway from St. Louis, Mo., and Memphis, Tenn., to Pine Bluff and Texarkana, Ark., and to Shreveport and Alexandria, La., and the Vicksburg, Shreveport & Pacific, and Alabama &

15 I. C. C. Rep.

Vicksburg Railway Companies, which, under two corporate titles and one ownership and management, operate an east-and-west line of railroad from Meridian, Miss., through Jackson and Vicksburg, Miss., to Shreveport, La.

Monroe is located at the crossing of the Iron Mountain's line from Helena, Ark., through Alexandria, to Lake Charles, La., and the Vicksburg, Shreveport & Pacific line from Vicksburg to Shreveport. It is also reached by two smaller lines, to wit, the Little Rock & Monroe and the Arkansas, Louisiana & Gulf railroads. It is upon the Ouachita River. It lies west of Vicksburg, Jackson, and Meridian, respectively, 75, 120, and 216 miles. It is 96 miles east of Shreveport, 292 miles northwesterly from New Orleans, 98 miles north of Alexandria, 95 miles northwest of Natchez, and 152 miles south of Pine Bluff.

For a long time Monroe, Shreveport, and Alexandria have been grouped for rate-making purposes. They have the same rates from all important points, and while the distances vary somewhat, generally speaking Monroe is the center of a circle upon the circumference of which would rest Alexandria, Shreveport, Texarkana, Vicksburg, and Natchez.

The complaint attacks as unreasonable and discriminatory all rates in general from St. Louis and defined territories north, northwest, and northeast thereof. As all of the rates from those defined territories are based on St. Louis, and as any change in the rates from St. Louis would work a corresponding change in the rates from those several territories, it is not necessary here to discuss more than the St. Louis rates, except as it is of course proper and necessary to take into consideration the territory beyond St. Louis and the traffic therefrom which moves through St. Louis and which would be affected by any change made in the St. Louis rates.

The rates from Memphis to points on the Iron Mountain road both north and south of Monroe are attacked as unjustly discriminatory against Monroe, in that the rates from Memphis to Monroe are higher than from Memphis to other points on the same line north of Monroe and to points on the same line south of Monroe. The injustice and unreasonableness of this adjustment was admitted by that defendant and it was stated that without delay this cause for complaint would be removed.

Complaint attacks as unreasonable and unjustly discriminatory the rate adjustment under which traffic moves from St. Louis to New Orleans at lower rates than apply from St. Louis to Monroe. Complaint is made that rates from St. Louis to Jackson and Meridian are lower than from St. Louis to Monroe, and the class rates from Vicksburg to Monroe are attacked as not only discriminatory but as unreasonable *per se*. Complaint is made that Monroe is unjustly

discriminated against in that traffic to Monroe is governed by Western Classification, while traffic from St. Louis and other northern points to New Orleans, Vicksburg, Meridian, and Natchez is governed by Southern Classification. General relief is prayed for.

In this case the history of the rates from St. Louis to New Orleans, Natchez, and Vicksburg was not gone into very fully, but we have before us in another case, No. 1050, *Montgomery Freight Bureau v. L. & N. R. R. Co. et al.*, not yet reported, a history of those rates. Briefly stated, it is that before railroads were built into that territory traffic moved between St. Louis and New Orleans in both directions on the Mississippi River, and between New Orleans and other Gulf and Atlantic coast ports, by steamer. When the first railroad was built from St. Louis to New Orleans it was obliged to make rates that would compete with the river rates, and when additional lines were built they were not able to make any higher rates than those which had already been established and which were controlled by the competition of the river.

Rates from St. Louis by river had been made the same to Vicksburg and Natchez as to New Orleans, and here again the railroads were obliged to adopt the adjustment established before their advent. As a result New Orleans, Natchez, and Vicksburg and other Mississippi River points have ever since enjoyed the advantage of rates established as a result of the controlling competition of water carriers on the Mississippi River.

Under numerous decisions of the courts and of this Commission, controlling competition, especially of water carriers, such as exists at New Orleans, Natchez, and Vicksburg, justifies lower rates to those points than to intermediate points where the same competition does not exist and control. *Bovaird Supply Co. v. A., T. & S. F. Ry. Co. et al.*, 13 I. C. C. Rep., 56; *Indianapolis Freight Bureau v. P. R. R. Co. et al.*, 15 I. C. C. Rep., 567; *Louisville, etc., R. R. Co. v. Behlmer*, 175 U. S., 670; and *East Tennessee, etc., Ry. Co. v. I. C. C.*, 181 U. S., 18.

Where rates are fixed at certain terminal points by water competition a general custom has obtained of making rates to intermediate points upon the combination of the competitive rate to the terminal plus the local rate back. The reasonableness of a rate so constructed necessarily depends largely upon the reasonableness of the local rate which is added to the terminal rate, and, obviously, no rate to an intermediate point constructed under those conditions and on that principle can reasonably be higher than the sum of the terminal rate plus the local rate back.

In this case it appears that in many instances the rates to Monroe from St. Louis and defined territories beyond are in excess of the sums of the terminal rates to Vicksburg and the local rates from Vicksburg to Monroe. The rates to Vicksburg are used because

Vicksburg is the nearest river point to Monroe that enjoys New Orleans rates.

It appears that defendant St. Louis, Iron Mountain & Southern Railway joins in transportation of traffic from St. Louis to Vicksburg via Monroe in competition with rail lines reaching Vicksburg on the east side of the Mississippi River. Manifestly, therefore, it is unreasonable and unjust for this defendant to maintain from any point on its line to Monroe a rate that is in excess of the rate from the same point to Vicksburg plus the local rate Vicksburg to Monroe, and we so find.

The class rates from Vicksburg to Monroe, which are complained of as discriminatory and as unreasonable *per se*, are, in cents per 100 pounds, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	60	50	40	30	22	25	30	17	16	15

It is but 75 miles from Vicksburg to Monroe, but under the common point adjustment which groups Monroe, Alexandria, and Shreveport these same class rates apply from Vicksburg to Shreveport, which is 96 miles west of Monroe, and to Alexandria, which is 98 miles south of Monroe.

Defendant Vicksburg, Shreveport & Pacific Railway argues that the rates from Vicksburg to Monroe and Shreveport were made "to meet the rates from New Orleans." The distance from New Orleans to Monroe, as has been seen, is 292 miles. Justification has been found for equal rates from northern points to Vicksburg and to New Orleans, but it does not necessarily follow that what would be a reasonable rate from New Orleans to Monroe, 292 miles, is a reasonable rate from Vicksburg to Monroe, 75 miles. The 60-cent scale applies from New Orleans to Alexandria, 194 miles; New Orleans to Shreveport, 335 miles; New Orleans to Monroe, 292 miles; Vicksburg to Monroe, 75 miles; Vicksburg to Shreveport, 171 miles, and Vicksburg to Alexandria, 173 miles. This adjustment gives these places the advantage of being equidistant, so far as the rates are concerned, from New Orleans and Vicksburg. The 60-cent scale applied only between Vicksburg and Monroe would be abnormally high; when extended to Shreveport and Alexandria it appears different. Unless Monroe were divorced from the Shreveport group it could gain no advantage from a reduction of the rates from Vicksburg to Monroe. And even if Monroe were divorced from the Shreveport group no reduction could be made in those rates which would not operate as much to the advantage of Vicksburg as to that of Monroe.

It should be remembered that under the adjustment complained of Monroe has direct rates from St. Louis based upon \$1.17 per 100 pounds, first class, whereas the combination on Vicksburg is \$1.50.



Complainant alleges that to reduce the Vicksburg-Monroe rates one-half would produce reasonable rates. Even if that were done the combination on Vicksburg would be \$1.20 per 100 pounds, first class, as against the direct rate of \$1.17. Monroe could not ship from St. Louis any cheaper than at present, while Vicksburg could sell in Monroe itself with a differential of only 3 cents against Vicksburg. In addition to that, Vicksburg would thus be given a decided advantage over Alexandria and Shreveport.

With relation to this equal adjustment of rates from Vicksburg and New Orleans to the points in the Shreveport group, one of defendants' witnesses was asked: "Do you, as a traffic man, say that each of those rates is just and reasonable?" He answered: "I do not." This, it is argued, is an admission that the Monroe adjustment is unjust and unreasonable. It does not appeal to us in exactly that way. The adjustment as a whole might be just and reasonable even though *each* rate might not of itself be just and reasonable.

The commercial interests in the cities of Alexandria and Shreveport have intervened in this case. They object to disruption of the grouping of Alexandria, Monroe, and Shreveport and pray that no adjustment be made at Monroe which excludes either Alexandria or Shreveport from the same benefits that are given Monroe.

Complainant alleges that Monroe, being located on the Ouachita River, does not receive full and complete benefit of water competition by reason of the fact that the rates via the river are the same as via the rail lines. The rail lines argue that the rates were first fixed by the steamboats and were met by the railroads. The steamboat rates are under control of, and have been approved by, the state commission of Louisiana. It appears that the water route to Alexandria is as good as that to Monroe, and also that originally the Shreveport rates were made upon an adjustment from St. Louis to Red River landings, including Shreveport.

Complainant alleges that its commercial competitors are Vicksburg and Natchez, Miss., Alexandria and Shreveport, La., and Pine Bluff, Ark. Obviously, Monroe can not demand or be accorded the same basis of rates as New Orleans, Natchez, or Vicksburg. There is no such competition at Monroe as would require or justify that adjustment. Monroe is on an exact equality from all directions with its competitors Shreveport and Alexandria. It does not appear that competition from Pine Bluff, Ark., is serious or threatening.

The classification territories have been long established, and while they contain many conditions which seem to us undesirable, and while it appears that for a short period of two years between 1888 and 1891 Monroe rates were governed by Southern Classification, we see no more reason for now extending the Southern Classification to

Monroe than to any other place in Western Classification territory. A committee representing carriers from the different classification territories has been engaged for months in the laudable work of preparing a uniform classification for the whole country.

Complainant argues that Monroe is less distant from St. Louis, New Orleans, or Vicksburg than is Shreveport, and that on that account alone Monroe is entitled to lower rates. Monroe is nearer to Vicksburg than the other places are, but aside from that the differences in distance are not sufficient to be controlling. Monroe is 24 miles nearer to St. Louis than is Shreveport. This difference on a haul of more than 500 miles is insignificant. The Commission has often said that distance is to be regarded in determining the reasonableness of rates, and has also frequently said that distance alone can not control. Group rates have often been approved. Originally rates to Monroe were higher than to Shreveport. In 1892 they were made the same under the grouping of Shreveport, Monroe, and Alexandria. Complainant calls attention to the fact that in 1902 the class rates to Monroe were materially less than in 1908, but the history of these rates shows that in 1888 the rates were higher than they were at the time this complaint was filed; that they went still higher, and that through years of changing conditions and competitive struggles they fluctuated up and down.

Complainant argues that, inasmuch as low rail rates have greatly reduced the steamboat traffic on the Mississippi River, water competition no longer exists at Vicksburg, and that, therefore, justification for the lower rates all-rail from St. Louis to Vicksburg through Monroe is removed. The river, however, is still at Vicksburg, and any increase in the rail rates sufficient to induce the establishment of additional steamer lines would transform the diminished but strongly potential water competition into augmented active water competition which, once established, must continue. *Interstate Commerce Commission v. A. M. Ry.*, 168 U. S., 172.

Complainant compares the rate per ton per mile St. Louis to Monroe with the rate per ton per mile St. Louis to Vicksburg and to New Orleans, but the competitive rates at Vicksburg and New Orleans answer that argument.

Complainant asserts that justice to Monroe demands that it shall be given the same rates as are given to Jackson and Meridian, Miss. Here again reference to the history of these rates is necessary to an understanding of the situation, and again we refer to the record before us in another case. As before stated, the first railroad from St. Louis to New Orleans was obliged to make the same rates that were made by the boats from St. Louis to New Orleans. That railroad passed through Jackson, Miss., and in order to get Jackson business it

was obliged to make from St. Louis to Jackson rates that would compete with the water rates St. Louis to Vicksburg plus the short haul from Vicksburg to Jackson.

The Mobile & Ohio Railroad was built by Mobile interests from Mobile northwesterly to St. Louis. Mobile was a Gulf port strictly competitive with New Orleans and it was therefore necessary in order to get anything like its share of business for the Mobile & Ohio, to make between St. Louis and Mobile the same rates that the Illinois Central made between St. Louis and New Orleans.

As has been seen, the Alabama & Vicksburg road runs east from Vicksburg through Jackson to Meridian, where it connects with the Mobile & Ohio, which company, in protection of what it deemed to be its interests, established at Meridian the same rates which the Illinois Central had established at Jackson. In order for the Alabama & Vicksburg to participate in the haul of any business from the north to either Meridian or Jackson it was necessary for it to make the best arrangements it could with the Mobile & Ohio and the Illinois Central. Under such arrangements traffic is hauled from St. Louis to Meridian via the Mobile & Ohio and to Jackson via the Alabama & Vicksburg at the same rates that apply via the Illinois Central from St. Louis to Jackson; and traffic is also hauled from St. Louis to Jackson via the Illinois Central and to Meridian via the Alabama & Vicksburg at the same rates. The Alabama & Vicksburg is therefore somewhat responsible for the rates at Jackson and Meridian, but if it were to withdraw entirely from that business the rates from St. Louis to Meridian and to Jackson would remain the same.

Traffic from Vicksburg to Jackson does not have to cross the Mississippi River as traffic from Vicksburg to Monroe and Shreveport does.

It appears also that the defendants herein join in hauling traffic from St. Louis to Jackson and Meridian via Monroe and Vicksburg in competition with the rates applying from St. Louis to Jackson and Meridian via the direct lines. But if these defendants were to go out of that business entirely it would not affect the rate adjustment at Meridian or Jackson and would not benefit Monroe. *Johnston-Larimer Dry Goods Co. et al. v. A. T. & S. F. Ry. et al.*, 13 I. C. C. Rep., 388.

Complainant originally prayed that Monroe be divorced from the Shreveport group, which has existed for some seventeen years, but this position was substantially abandoned upon the testimony and argument. Even if it had not been abandoned we see no justification for an order on our part which would require such divorcement.

One of the principal witnesses for complainant, a business man of Monroe, testified that 60 to 65 per cent of his business was grain and grain products. It appears that practically all of this comes from

Kansas City and that a very small portion of it comes from either St. Louis or New Orleans under any rates here complained of. Much traffic reaches Monroe and group by water from New York to New Orleans and by rail from New Orleans.

The testimony went largely to a question of how far, under the present adjustment of in and out rates, the several towns of Monroe, Shreveport, and Alexandria could reach in the distribution of merchandise. Necessarily witnesses admitted that if Monroe's prayer for divorcement from the group and for a new rate adjustment was granted it would establish discriminations against Shreveport and Alexandria. Shreveport is one-half larger than Monroe in population and has more business houses and does more commercial business. Alexandria is about equal to Monroe in these respects. The rates to Monroe were reduced to the Shreveport basis when the Iron Mountain road came into Monroe.

The all-rail rates from St. Louis to Monroe and group are substantially the same, although lower on some classes and a little higher on some classes, as the rates from St. Louis to Texarkana, the latter point being 50 miles north of Shreveport. It is contended by defendants that if the rates from St. Louis to Monroe are reduced such reduction must necessarily apply to Shreveport; that it will then affect Texarkana, and through that the Texas adjustment.

The class rates from St. Louis to Vicksburg are on a scale of 90 cents first class; to Jackson and Meridian 98 cents; to Shreveport group \$1.17. Are these rates to the Shreveport group unreasonable? It is asserted by defendants, and admitted by complainant's witnesses, that the rates from St. Louis to the Shreveport group are as low as, and in no case higher than, the rates to any other jobbing point in Louisiana except the Mississippi River points. The first class rate from St. Louis to the Shreveport group is 19 cents higher than from St. Louis to Jackson or Meridian. Jackson is within 45 miles of Vicksburg and on the same side of the river. Monroe is 75 miles and Shreveport 171 miles west of Vicksburg and on the opposite side of the Mississippi River. The rates from St. Louis or Vicksburg to Monroe apply also to Alexandria, 98 miles south of Monroe.

There is no showing in this case of the value or cost of these railroads or the volume of their traffic. On the record and on the basis of the comparisons invited with the rates from St. Louis to Jackson and Meridian, taking into consideration the relative competitive conditions, it is not believed that the rates to the Shreveport group are relatively unreasonable.

It is not possible at this time to intelligently enter any comprehensive order in this case. The rates from St. Louis to Monroe or to the Shreveport group, including Monroe, must be so adjusted that no

rate will exceed the combination on Vicksburg or New Orleans. Defendant St. Louis, Iron Mountain & Southern Railway has declared its willingness and intention to immediately adjust its rates from Memphis to Monroe, and also its rates from Natchez to Monroe. We do not know what these adjustments will be and shall therefore not at this time enter any order with relation thereto. It is expected that these adjustments from Memphis and from Natchez will be promptly made, and that all rates to Monroe or to the Shreveport group, including Monroe, which are in excess of the combination on Vicksburg or New Orleans will be at once corrected so that they will not exceed the combination on Vicksburg or New Orleans, whichever makes the lower.

The case will be held open for such further proceedings or the entry of such orders as may be found necessary.

15 I. C. C. Rep.

No. 1905.

J. B. PLACE

v.

TOLEDO, PEORIA & WESTERN RAILWAY COMPANY  
ET AL.

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Submitted March 2, 1909. Decided March 8, 1909.

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Fuel wood may lawfully be included in a carload of emigrant movables under a tariff which permits including limited quantities of lumber and fence posts, and also "property included in the outfit of intending settlers." Reparation awarded.

*Carle Whitehead* and *Albert L. Vogl* for complainant.

*Stevens & Horton* for Toledo, Peoria & Western Railway Company.

*Hale Holden*, *Chester M. Dawes*, and *Vaile*, *McAllister & Vaile* for Chicago, Burlington & Quincy Railroad Company.

*E. E. Whitted* and *R. H. Widdicombe* for Toledo, Peoria & Western Railway Company, and Colorado & Southern Railway Company.

#### REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

This complaint involves the sole question of whether or not it was permissible under the tariffs in effect at the time to include in a carload of emigrant movables which moved from La Harpe, Ill., to Boulder, Colo., via the lines of the defendants, common carriers subject to the act to regulate commerce, 5,165 pounds of stove wood, for the movement of which \$47.52 extra charges were exacted, and for which sum reparation is asked. The facts in the case are set forth in a stipulation entered into by the parties and submitted at the hearing, defendants apparently desiring, out of an abundance of caution, to have determination of the question before making refund.

On the 11th day of September, 1908, complainant shipped a carload of goods from La Harpe, Ill., consigned to himself at Boulder, 15 I. C. C. Rep.

Colo., and prepaid to the Toledo, Peoria & Western Railway Company, \$85 freight on said car. The goods were waybilled as household goods and the bill of lading so read.

Eighty-five dollars was the correct rate at that time for a carload of emigrant movables, minimum weight 20,000 pounds, from La Harpe, Ill., to Boulder, Colo., and the item "Emigrant movables," as described in defendant's tariff, included, among other things, household goods, limited quantities of lumber, shingles and fence posts, and "property included in the outfit of intending settlers." Articles intended for sale or speculation were prohibited.

The same classification carried rating for shipments of household goods, carloads, minimum weight 20,000 pounds, Class B, with following description:

Household goods not for sale or speculation (including personal effects, second-hand furniture, stoves, etc.), the value of which is declared by the shipper not to exceed \$5 per 100 pounds, carload shipments prepaid or guaranteed.

The Class B rate from La Harpe, Ill., to Boulder, Colo., at the time this shipment moved was 64½ cents per 100 pounds.

This car was inspected at Lincoln, Nebr., and a notation was there made on the waybill that car contained a load of cord wood. At Boulder, Colo., the weight of this wood was ascertained to be 5,165 pounds. The wood was sawed into lengths of about 2 feet each, was intended for fuel, was the property of complainant, and was not intended for "sale or speculation." No lumber, shingles, fence posts, or other wood was shipped in this car. The total contents of this car, including the wood, did not exceed 20,000 pounds in weight.

Complainant informed the agent of defendant, the Toledo, Peoria & Western, at La Harpe, Ill., that he desired a car in which to ship his general effects and that he was going with his family to Boulder to settle. The furniture was loaded in the ends of the car, the wood in the center of the car between the doors on either side, and if the car was examined it was impossible not to see the wood. There was no effort to hide the fact that the wood was loaded into the car or to mislead or deceive defendant's agents with relation thereto. Obviously defendant's agent at point of shipment considered shipment to be emigrant movables. He accepted it as such and collected charges upon it accordingly. Defendant's agent at point of destination also accepted the shipment as a car of emigrant movables. No demand was made for additional charges except for the wood. Defendant's witness admitted that the tariff provisions governing this transportation are ambiguous and that there was room for argument as to whether or not fuel wood was included under the emigrant

movables rate, which, as has been seen, includes, among other things, household goods and "property included in the outfit of intending settlers."

The tariff does not assume to specify where the emigrants shall settle, whether in a city or in the country, and we see no reason why there should be any distinction in this connection. Of course, we understand the reason underlying the provision for the transportation of emigrant movables, and that it is offered as an inducement to persons to settle in undeveloped localities. Fuel wood was, in this instance, "property included in the outfit of intending settler." The tariff provision is broad, and no doubt purposely so. The settlers in a new country desire to take along many things which it would be practically impossible to list specifically. It is as necessary and as proper to include fuel wood in emigrant movables as to include fence posts. If defendants desire to further restrict or more particularly define what may be included in shipments of emigrant movables, changes to that end can be made in tariffs or classification.

It is our view that under the tariff provisions noted fuel wood could properly be included with the shipment of emigrant movables and that the extra charges assessed on such wood in this case were in excess of the lawful tariff charges. Complainant is therefore entitled to reparation for the sum so paid, \$47.52, and interest at 6 per cent per annum from October 1, 1908. An order will be entered accordingly.



No. 1701.  
CEDAR HILL COAL & COKE COMPANY  
v.  
COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted December 17, 1908. Decided March 8, 1909.*

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A charge of \$5 per car for the privilege of changing destination of shipment, when change was made before or immediately after arrival of car at first destination, and when no back haul or out-of-line haul was required, was unreasonable to the extent that it exceeded \$2 per car.

*C. W. Durbin* for complainant.

*E. E. Whitted* for defendants.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

The complaint in this case attacks the reasonableness of a reconsignment rule of the defendants in connection with shipments of coal. Defendants, common carriers amenable to the act to regulate commerce, had a rule providing for reconsigning charges of \$5, \$6, and \$7 per car when reconsigned within twenty-four, forty-eight, and seventy-two hours, respectively. This rule was superseded by a rule which provides for reconsignment charge of \$2 per car. This rule complainant alleges to be just and reasonable. Reparation is sought on 4 cars of coal shipped from Greenville mine, Colorado, and reconsigned to various points.

Complainant operates the Greenville mine near Ludlow, Colo., on the line of defendant the Colorado & Southern Railway. On November 21, 1907, complainant shipped 1 car of coal from Greenville mine billed to Olustee, Okla., via the lines of the defendants. On November 23, this car was ordered diverted to Eldorado, Okla., and on November 25, before it had reached Quanah, Tex., was ordered stopped at that point, and a charge of \$5 for reconsignment was made.

On November 26, 1907, complainant shipped 3 cars of coal from Greenville mine billed to Eldorado, Okla. On November 27, 1907,

15 I. C. C. Rep.

complainant ordered them stopped at Amarillo, Tex., on the line of defendant the Fort Worth & Denver City Railway, and on November 28, 1907, ordered them diverted to Decatur, Tex. Two of these cars arrived at Amarillo at 9 p. m. November 28, and 1 car arrived at 7.15 p. m. December 3. A charge of \$5 for each car was made by the defendants for stoppage to the first 2 cars at Amarillo, and a charge of \$5 each for diverting all 3 cars was also made, a total charge of \$25.

The total charges for stoppage and diversion of the 4 cars was \$30, and the claimed reparation of \$22 is based upon the difference between that charge and a reconsignment charge of \$2 on each car.

Defendants' tariff in effect November 21, 1907, the date of the first shipment, provided that where through rates were in effect destinations of shipments of coal might be changed without charge if change was made before shipment reached first destination and if change did not require handling car out of direct route. It also provided for charges of \$2, \$3, and \$4 per car, respectively, for changes made within twenty-four hours, after twenty-four hours and within forty-eight hours, and after forty-eight hours and within seventy-two hours, after arrival at first destination. The destination of this car was changed twice, but in each instance before car had reached the first destination, and the car was stopped and delivered at Quanah without any handling out of direct line. There appears, therefore, no provision or justification for reconsignment charge on that shipment.

Effective November 25, 1907, defendants' reconsigning rules were changed so as to provide for a reconsigning charge of \$5 per car if destination was changed before arrival or within twenty-four hours after arrival at first destination and before delivery was made; \$6 per car if change was made after twenty-four hours and within forty-eight hours after arrival; \$7 per car if change was made after forty-eight hours and within seventy-two hours after arrival; and no change permitted after seventy-two hours. It was also provided that if a shipment was stopped in transit short of its first destination, that stopping point should be considered the first destination and the shipment be subject to the same rules that would apply if it had gone to first destination as billed.

The three shipments of November 26, 1907, moved under these rules. Amarillo, therefore, became the first destination as to them, and they were subject to the same rules as if they had been originally billed to Amarillo. Shipper was entitled to change the destination before shipment reached the first destination or within twenty-four hours after its arrival there, under a reconsigning charge of \$5 per car. Orders to change the destinations of these shipments were

given on November 28, 1907. Two of the cars did not reach Amarillo until the night of that date, and 1 car did not reach there until several days later. They were sent from Amarillo to Decatur, and, as we read defendants' tariff rules, were subject to the same rules and charges as if they had gone direct to Eldorado and before arrival at that point had been ordered to some other point on the direct line to which reconsignment could be made under the rates. We therefore see no warrant under the rules for any reconsignment charge on these shipments other than that of \$5 per car.

The reasonableness of the charge of \$5 per car for reconsignment is assailed, and the fact that, effective September 8, 1908, defendants again changed their rules and provided for reconsignment charge of \$2 per car is presented in support of the allegation that the charge of \$5 per car was unreasonable. The rules in connection with the \$2 charge provide, however, that if shipments are stopped short of billed destination at directly intermediate points freight charges will be assessed at regular rates to such stop-over point, and in addition the \$2 reconsigning charge will be assessed. Reconsignment from point to which shipment is originally billed is permitted without charge if change is made before arrival or within twenty-four hours after arrival, provided back haul or out-of-line haul is not required.

While admitting the facts in connection with the shipments the defendants, answering, jointly deny that the charges assessed were unjust or unreasonable, and deny that \$2 per car is a just and reasonable charge.

The defense of the defendants to the allegation of the unreasonableness of the charges was testimony directed to the cost of reconsignment. One of the witnesses testified that at commercial or Western Union rates it cost \$13.92 for telegraphic instructions to divert two cars at the request of the complainant; that had the request been in connection with but one car the cost would have been the same; that all the telegrams sent in connection with the diversion of the cars were necessary and were in accordance with the usual and ordinary practice. If this be so the practice is a cumbersome one. It, however, appears that defendant the Colorado & Southern has a yearly contract with the Western Union Telegraph Company for the use of its wires, for which it pays a certain fixed sum. The operators are in the employ of the defendants and are paid by them, and one of their duties is sending telegrams in connection with reconsignments. No special men are employed for this particular work. No specific evidence of probative value was given as to the actual cost to the defendants of telegraphing in connection with reconsignments, but the opinion was expressed that it would cost more than \$5 per car. Testimony was offered as to the number of messages that had been

sent by the defendants on company business, the number of telegraph operators employed, their average salary, and the aggregate cost of that service. There is, however, no showing as to the number of messages which were sent relating to reconsignments and diversions; nor does the testimony show the amount of time devoted to such business by the force of operators. This testimony is therefore of no value in determining what would be the cost of diverting a car.

The reasons for the changes in the charges on diverted shipments were not brought out in testimony, although it was suggested by one of defendant's witnesses that it was to meet competitive conditions. In fact, at the time defendants' \$5 charge was in effect competitive charges were lower, and they are now a little higher than defendants' \$2 charge.

From the testimony of the traffic manager of defendant the Colorado & Southern it appears that the changes in the reconsignment rules were made in an effort to establish a uniform plan accommodative to the patrons of the road, and that the reduction was for the purpose of placing shippers over defendants' lines on a parity with shippers on other lines. He, however, expressed surprise at the supposed cost of the service.

The fact that the \$5 charge remained in effect less than a year, and its reduction to \$2 furnishes a presumption that the \$5 charge was unreasonable, but such presumption is, of course, not imperative or conclusive and might be overcome by proof of cost of the service tending to justify the exaction of the charge. The reasonableness of a reconsignment charge is dependent upon the cost of that service. We have here no satisfactory or definite showing as to the cost of the service. We do know what defendants and other carriers have charged for that service in the past and what they are charging at the present time. The fact that it is a privilege under which, generally speaking, the shipper secures the advantage of a lower through rate which would not have been accorded had the reconsignment privilege not been in effect must be considered.

The presumption is clearly against the reasonableness of the \$5 charge, and we find that a charge of \$5 per car for a change of destination made before arrival or within twenty-four hours after arrival of car at first destination and before delivery, was, on the date these shipments were reconsigned or diverted, unjust and unreasonable to the extent that it exceeded the prior as well as the subsequently established charge of \$2 per car for the same service. This view is directed to the charge that may reasonably be made for a simple change in destination or consignee, which does not require any back or out-of-line haul, which is made before or promptly after arrival at billed destination, and in accordance with

such reasonable rules as defendants may establish in connection with the privilege. It is for the defendants to decide and to provide in their tariffs whether or not more than one change will be permitted on one shipment, and whether or not each change shall be charged for if more than one change is permitted.

Complainant is entitled to reparation for the \$5 overcharge on the shipment of November 21, 1907, the \$10 overcharge on the 2 cars that arrived at Amarillo on November 28, 1907, and \$9, the difference between the reconsignment charges collected on the 3 cars shipped November 26, 1907, at \$5 per car and what the charges would have been at \$2 per car, herein found to be reasonable; aggregating \$24, with interest at 6 per cent per annum from January 1, 1908.

An order will be entered in accordance with these views.

15 I. C. C. Rep.

No. 1946.

H. CHANNON COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COM-  
PANY ET AL.

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Submitted February 17, 1909. Decided March 8, 1909.

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Complainant shipped 11 rolls of old worn-out canvas, bought as junk, from Worcester, Mass., to Chicago, Ill., upon which the first class rate of 75 cents per 100 pounds was assessed, instead of the junk rate of 35 cents per 100 pounds. Reparation awarded on the 35-cent basis, and defendants required to apply to this commodity for the next two years a rate not exceeding that imposed for the transportation of junk.

*J. F. Ehringer* for complainant.

*Robert J. Cary* for defendants.

## REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant, a corporation doing business in the city of Chicago, made shipment in October, 1908, of 11 rolls of old canvas, weighing 2,960 pounds, from Worcester, Mass., to Chicago, Ill., upon which a rate of 75 cents per 100 pounds was assessed and charges aggregating \$22.40 paid. The allegation is that this rate was excessive.

The Lake Shore & Michigan Southern Railway was the delivering carrier. When suit was brought the complainant supposed that the initial line was the New York, New Haven & Hartford Railroad, but further investigation shows that the Boston & Maine Railroad received this shipment at Worcester. That company has been made a party to this proceeding, has accepted service, and appeared upon the hearing.

There must have been some intermediate carrier between the Boston & Maine and the Lake Shore & Michigan Southern, but this case does not name that carrier. The attorney for the New York Central Lines, who appeared upon the hearing, understood from correspondence before him that the shipment moved via the Boston & Maine and the lines which he represented, and was satisfied that an order should be made against the Lake Shore & Michigan Southern and the Boston & Maine, if the Commission was of the opinion that the complainant was entitled to recover at all.

15 I. C. C. Rep.

The canvas, of which a sample was presented, was of cotton and of the general kind used in making sails. It was worn out so as to be of no further use as canvas, and this was apparent upon the most casual inspection. The complainant is a dealer in old junk and purchased this canvas as junk. The testimony shows that it was worth about 3 cents per pound, that being approximately the value of rope junk.

The Official Classification contains the following ratings:

Canvas:	Class.
Cotton or jute, in bales or cases.....	R. 25
N. o. s., in bales or cases.....	1
Rags, in bags, sacks, or crates .....	2
Junk (old rope and cordage), L. C. L.....	4

This commodity was assessed the first class rate of 75 cents. In our opinion it was entitled to the junk rate of 35 cents. It had ceased to be canvas; it could no longer be used as canvas, and this was plainly apparent. It was sold and bought as junk; its value was that of junk, and no good reasons appear why it should be charged a higher rate.

If under the present classification, which apparently defines junk as rope and cordage, this article is not included in that term the classification should be modified.

We find that the complainant has been compelled to pay excessive charges to the amount of \$11.84, that being the difference between charges collected and what should have been assessed at 35 cents per 100 pounds. An order will issue requiring defendants Lake Shore & Michigan Southern Railway Company and the Boston & Maine Railroad to repay this sum to the complainant, with interest at 6 per cent from November 1, 1908.

An order will further issue requiring the said defendants to apply to this commodity for the next two years a rate not exceeding that imposed for the transportation of junk. As to the New York, New Haven & Hartford Railroad Company the complaint should be dismissed.

15 I. C. C. Rep.

No. 1248.

GOFF-KIRBY COAL COMPANY

v.

BESSEMER & LAKE ERIE RAILROAD COMPANY.

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No. 1721.

SAME

v.

SAME.

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No. 1249.

BUTTS CANNEL COAL COMPANY

v.

SAME.

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*Submitted February 8, 1909. Decided March 8, 1909.*

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On motion of parties in complaints herein involving claims for reparation for unreasonable rates on cannel coal on the basis of decision of the Commission in the original proceedings, 13 I. C. C. Rep., 383, a written agreement providing for compromise settlement of these claims is approved.

*Kline, Tolles & Goff* for complainants.

*G. E. Shaw* for defendant.

#### REPORT OF THE COMMISSION

PROUTY, *Commissioner*:

On April 14, 1908, the Commission rendered an opinion in the above cases, Nos. 1248 and 1249, 13 I. C. C. Rep., 383, holding that the defendant should apply to the transportation of cannel coal the rates established by it for bituminous coal. Reparation was claimed in both cases, and that question was reserved for further proceedings if the parties failed to agree. No agreement having been reached, those two cases are brought forward, and No. 1721 has been filed for the purpose of obtaining the entire reparation due upon the basis of our decision in the original cases.

15 I. C. C. Rep.



The schedules filed by the complainants in the several cases show in detail the shipments on account of which reparation is claimed. They aggregate \$4,166.99. The defendant admits as due \$1,602.36. The balance is in dispute. The shipments are numerous, the quantity and amount paid are often in doubt, and in many cases the parties do not agree upon the rate itself. After several attempts to determine the amount due more exactly, the parties have finally agreed upon the sum of \$2,500 to be paid in full satisfaction, provided the Commission will approve the compromise.

This matter was set down for hearing. From the statements of the parties and the facts developed it seems clear that the amount proposed is not in excess of what the complainants are entitled to recover upon the basis of our original decision. We shall therefore approve the compromise and issue an order to that effect.

15 I. C. C. Rep.

No. 951.

GEORGE J. KINDEL

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD  
COMPANY ET AL.

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*Submitted August 14, 1907. Decided March 2, 1909.*

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Complaint alleges that, generally, rates from the Missouri River and east thereof to Denver, and from Denver to Utah common points are discriminatory, unreasonable, and excessive; *Held*, That the present adjustment of rates is discriminatory against Denver, in favor of Kansas City and other Missouri River crossings, and that the class rates from Chicago and from St. Louis to Denver are excessive and unreasonable, and that they should be reduced; and *Held, further*, That the class rates from the Missouri River to Denver and from Denver to Utah common points are unreasonable and excessive, but that no order will be entered herein reducing those rates, as it seems obvious that they must be readjusted in harmony with the principles announced in the *Spokane Case*, *ante*, page 376, either through voluntary action of the carriers or in some other proceeding before this Commission.

*W. B. Harrison* for complainant.

*E. P. Costigan* for Denver Chamber of Commerce and Board of Trade, intervener.

*J. F. Vaile* for Denver & Rio Grande Railroad Company and Rio Grande Western Railway Company.

*C. M. Dawes* and *Vaile & Waterman* for Chicago, Burlington & Quincy Railroad Company.

*Robert Dunlap*, *J. L. Coleman*, and *Gardiner Lathrop* for Atchison, Topeka & Santa Fe Railway Company.

*C. C. Dorsey*, *L. E. Payson*, *J. N. Baldwin*, and *W. F. Herrin* for Union Pacific Railroad Company and Southern Pacific Company.

*M. A. Low* and *E. B. Peirce* for Chicago, Rock Island & Pacific Railway Company.

*C. D. Hayt*, *E. G. Buckland*, and *G. F. Brownell* for New York, New Haven & Hartford Railroad Company and Erie Railroad Company.

15 I. C. C. Rep.

*D. W. Tears* for New York Central & Hudson River Railroad Company, Lake Shore & Michigan Southern Railway Company, and Michigan Central Railroad Company.

*J. C. Jeffery* for Missouri Pacific Railway Company.

#### REPORT OF THE COMMISSION.

##### *CLARK, Commissioner:*

Complainant is a manufacturer of mattresses and a dealer in brass beds and similar articles in the city of Denver, Colo. Complainant alleges that the rates charged by the defendants from New York, Chicago, St. Louis, Omaha, and points taking similar rates to Denver are excessive and discriminatory and that the rates from Denver to Salt Lake City are also excessive and preferential. An order is prayed for that will fix just and reasonable rates, rules, and regulations governing transportation between the points mentioned and that will prevent the continuance of the alleged unreasonable and undue exactions and discriminations complained of. The complaint specifically alleged that the rates from Chicago, St. Louis, and the Missouri River to Denver were excessive, but the allegation respecting rates from Denver to Utah points was in general terms. Certain commodities were named in the complaint, but it was stated that they were referred to only by way of illustration. At the hearing complainant introduced testimony respecting many articles not specified in the complaint and stated that what he desired was to raise the general question of the rate adjustment at Denver and to obtain a general order which would correct that situation. The Commissioner who took the testimony stated at the hearing that it was doubtful if the Commission could make a general order of the kind which complainant desired on a general complaint like that in question, and still more doubtful if it would undertake to do so in this particular case. Thereupon the complainant, before any testimony had been introduced by defendants, amended his complaint by filing the class rates from Chicago, St. Louis, and Omaha to Denver, and from Denver to Utah points, alleging that same were excessive and that they should be reduced. He later filed a list of commodities as to which he desires a specific order.

Witnesses were introduced by complainant who testified to particular rates and regulations which were alleged to be unreasonable, but many of such matters were not referred to in the complaint and defendants had no notice, until the testimony was introduced, that they would be subjects of investigation. Hence the matters thus complained of are not before us in such manner that any order can be entered with relation thereto, but assuming the testimony introduced as to them to be correct, it would seem that some new adjustment

should be had. However, if satisfactory adjustment is not made we can deal with the question only under a complaint which properly raises those points. We are authorized to reduce a rate, or to modify a rule or practice which affects a rate only after full hearing upon complaint, and no order can be entered by the Commission affecting a carrier's rates or regulations except after such carrier has been given full and fair opportunity to be heard.

The testimony showed that the bulk of the traffic to and from Denver moves under class rates. The general question presented, therefore, is an adjustment of the class rates from Chicago, St. Louis, and the Missouri River to Denver, and from Denver to Utah points. While complainant alleges that rates to and from Denver are excessive, and while the testimony reenforces this assertion, the grievance most insisted upon was that the present adjustment of rates favors cities upon the Missouri River, of which Kansas City is fairly illustrative, and unjustly discriminates against Denver.

The first class rate from Chicago to Kansas City is 80 cents, and from Kansas City to Utah common points \$2.05, making a through rate, based on Kansas City, of \$2.85. From Chicago to Denver the first class rate is \$2.05, and from Denver to Utah points \$1.64, making a through rate, based on Denver, of \$3.69, higher than the combination on Kansas City by 84 cents. The service rendered by defendants is the same in either case (except that in one instance the traffic might be unloaded at Kansas City and in the other instance at Denver), and in the Utah territory the merchant at Denver is at a decided disadvantage as compared with his competitor at Kansas City in dealing in commodities that originate east of the Missouri River, while the manufacturer at Denver is under a like disadvantage as compared with the manufacturer at Kansas City if the raw material comes from east of the Missouri River.

This advantage held by the dealers and manufacturers at Kansas City and other Missouri River cities is due to the fact that the carriers have made the Missouri River a basing line for rate-construction purposes—that is, rates from points east of that river to points west thereof are made by adding together the rates to the river points and the rates from the river points; and to Denver and Utah points and to a great expanse of territory lying west of the Missouri River the through rates are made up from the sums of the rates to and from the Missouri River basing-line cities. The first class rate from Chicago to the Missouri River is 80 cents, from the Missouri River to Denver it is \$1.25, and from Chicago to Denver it is the sum of these two, or \$2.05. As to Denver, therefore, the dealer in Kansas City can purchase at Chicago or other eastern points, ship to Kansas City,

and reship to Denver at the same total rate that is charged the Denver dealer if he ships direct from Chicago or some other eastern point.

The Denver Chamber of Commerce intervened in this proceeding, and it insists that the proper way to eliminate the alleged discrimination against Denver is not by reducing rates to Denver, but that it should be removed by making Denver a basing line. There are certain points in Colorado which, together with Denver, are known as Colorado common points, and to which rates from the east are generally the same. The Denver Chamber of Commerce urges that these Colorado common points should be made basing points in the same way that the Missouri River is a basing line, and that the discrimination against Denver would thus be removed. We are not impressed with this view, and for several reasons. It might be that to establish the Colorado common points as a basing line would satisfy the complaint of the Denver interests and would substantially remove the disadvantage of which they complain as compared with the Missouri River crossings, but Salt Lake City and other Utah common points would then have exactly the same complaint as to Denver that Denver now has as to Kansas City.

The carriers can haul traffic from Chicago direct to Denver cheaper than they can haul it to Kansas City, permit it to be unloaded, and at some subsequent time reloaded and forwarded to Denver. The rate for a long through haul should ordinarily be less than the combination of two or more local rates that are included within that distance over the same lines. Through rates for long hauls are necessary to the development of the country and to the removal of such discriminations as Denver complains of in this instance.

We see no good reason for withholding from Denver reasonable through rates for through service. Rates made up on combination on a closely adhered to basing line must be made with regard to the cost of the terminal services, which is necessarily high. If traffic moving from Chicago to Denver is sold, resold, unloaded, and reloaded at Kansas City, the Denver dealers and the consumers of that traffic must pay the profits and extra costs involved in those transactions. The combination rate must include the cost of that extra service. If, on the other hand, the traffic moves directly through from Chicago to Denver the cost of the extra terminal service at Kansas City is saved to the carriers, and, as that cost is provided for in the rate that is applied to such through movement, the rate is too high if that cost is not incurred, except in cases in which the combination rate is made up from factors which are so low in themselves as to result in a reasonably low through rate. While it is proper in fixing rates for transportation to give consideration to commercial conditions and needs, rates for services over the same lines, between

the same points but under differing conditions, must be made with some consideration for the difference in the cost of the service.

In *Burnham, Hanna, Munger Dry Goods Co. et al. v. Chicago, Rock Island & Pacific Ry. Co. et al.*, 14 I. C. C. Rep., 299, we dealt with the complaint of Kansas City and other Missouri River cities against rates from the Atlantic seaboard to the Missouri River cities made on combination on the basing line at the Mississippi River crossings.

There complainants argued that the basing line at the Mississippi River should be disregarded or abolished, but one of complainants' expert witnesses testified that he did not think similar action should be taken with relation to basing line on the Missouri River crossings. It is clear that if their prayer had been granted and like action had been taken as to the Missouri River basing line, the Missouri River cities would have been right back in the same relation of rates as before and the discrimination of which they complained would not have been relieved in any degree.

In that case we said:

An abundant share of the prosperity and development of the trans-Mississippi and trans-Missouri territories has come to the Missouri River cities, from which this complaint comes, but the fact that they have prospered in the past as a result of rapid expansion and development of new territory may not be taken as conclusive evidence of the correctness or justness at this time of the rate adjustment that has prevailed in the past. We are not impressed with the view that the system of making rates on certain basing lines should be abolished. No system of rate making has been suggested as a substitute for it, except one based upon the postage-stamp theory, or one based strictly upon mileage. Either of these would create revolution in transportation affairs and chaos in commercial affairs that have been builded upon the system of rate making now in effect. It must not, however, be assumed that a basing line for rates may be established and be made an impassable barrier for through rates, or that cities or markets located at or upon such basing line have any inviolable possession of, or hold upon, the right to distribute traffic in or from the territory lying beyond. Development of natural resources, increase in population, growth of manufacturing or producing facilities, and increased traffic on railroads create changed conditions which may warrant changes in rates and in rate adjustments in order to afford just and reasonable opportunity for interchange of traffic between points of production and points of large consumption.

We there dealt with through rates that were constructed by adding together the rates from points of origin to the Mississippi River crossings and the rates from the Mississippi River crossings to the Missouri River cities, no through joint rates being in effect. In the present case some of the defendants have their own lines and their individual rates from Chicago to Denver; others of the defendants unite in joint through rates.

In the *Burnham, Hanna, Munger case, supra*, we said:

As railroads were constructed into the undeveloped west and, for a time at least, had their western termini at the east bank of the Mississippi River, it 15 I. C. C. Rep.

seems natural that when the river was crossed, and rates were established to points beyond, they should be constructed by adding certain sums to the rates already established to the river, and as additional lines were built and additional railroad crossings over the Mississippi River were constructed, competition between carriers and localities naturally established common rates to the Mississippi River crossings, especially when applied to traffic going beyond.

As the west was further developed, this same condition and like results followed at the several crossings of the Missouri River, so that to-day the rates from the Mississippi River crossings to the Missouri River crossings, Kansas City to Omaha, inclusive, are the same, and from points east to the Missouri River cities are the same via any of the Mississippi River crossings, East St. Louis to East Dubuque, inclusive.

The Mississippi and the Missouri rivers presented natural barriers to the construction of railroads from the east to the west. There is now no such natural inducement or justification for establishment of a basing line at the Colorado common points. Roads are constructed and in operation through the Colorado common points to all the territory lying between them and the Pacific Ocean, and there is no valid reason why the Colorado common points should be given, as to places lying west thereof, the very advantage which the Missouri River crossings now enjoy with relation to the Colorado common points and of which Denver here complains.

The present rate adjustment is, in our opinion, unjustly discriminatory against Denver and in favor of Kansas City and other Missouri River crossings. This discrimination can be removed only by the establishment of some new relation of rates, and it is not within the authority or power of this Commission to remove it except through a reduction in rates, which necessarily operates to reduce the revenues of the defendants.

In considering a new adjustment or relationship of rates, it is necessary and proper to take into consideration all the interests involved, as well as those of complainant and defendants herein. A new relationship or adjustment of rates affects the interests of other communities and commercial centers, and in making an adjustment to remove the discriminations found in this case action should be in harmony with the principles that have been adopted in other readjustments. Justice can not be done by prescribing an adjustment which might serve to satisfy complaint in this case if the effect of it is to impose upon some other persons or localities the burden that is lifted from the complainant herein.

In the *Burnham, Hanna, Munger case, supra*, we decided that the Missouri River cities were entitled to through rates from eastern points lower than the combination on the Mississippi River basing line. If we should now reduce the high class rates from the Missouri River crossings to Colorado common points and the higher class rates from Colorado common points to Utah common points it might temporarily benefit Denver, but unless we should also reduce the through

rates from Chicago, St. Louis, etc., to Denver, which are also too high because of the high factors from which they are constructed, the relationship between Kansas City and Denver would not be changed. Kansas City would still have the same advantage that Denver now complains of, with no result except reduction in rates and in the revenues of the carriers, which is against the announced desire of the Denver Chamber of Commerce.

As has been seen, the present rate adjustment between the east and the west is built upon basing lines at the Mississippi River and at the Missouri River. The Ohio River crossings form a similar basing line on traffic to and from the southeast, but no other such basing lines exist between the Atlantic seaboard and the west. It is not possible to have a rate adjustment which places all towns and cities upon an exact equality. Some places possess advantages of natural location which, together with other influences, have made them commanding commercial centers in a certain territory, and consideration must be given to such advantages and development in readjusting rates in cases where development, increase in population, growth of manufacturing and production, and increased traffic on railroads warrant changes in the rate adjustments which have obtained in the past.

In the *Burnham, Hanna, Munger case*, *supra*, we did not reduce the local class rates between the Mississippi and the Missouri Rivers; we did order a reduction in the separately established rates applicable to through business, through joint rates from the east to the Missouri River cities not being in existence and not being prescribed, because of the fact that east of Chicago and the Mississippi River Official Classification governs the tariffs, and west of Chicago and the Mississippi River Western Classification governs. Following the principle there established we think that here the class rates from Chicago to Denver and from St. Louis to Denver should be less than the sums of the local rates based on the Missouri River. Rates to points in Colorado other than Colorado common points, and, as we understand it, to many points in New Mexico and Wyoming, are based upon the Colorado common-point rates, and rates are so adjusted that in distribution of traffic brought from the east the Colorado common points have the state of Colorado and some points outside thereof as practically exclusive territory.

In the *Spokane case*, 15 I. C. C. Rep., 376, we held that the reasonableness of a rate between two points served by two or more carriers could not be determined by consideration alone of that line which is shortest and most favorably situated as to operations, earnings, etc., but that the entire situation must be considered.

This record does not disclose the expense of building the railroads between Chicago and Denver, but in other cases estimates of cost of constructing lines in Kansas and southern Nebraska have been laid before us, and from a general knowledge of the territory and the



lines serving same we are convinced that there is nothing unusual in the original cost of building or in the present cost of maintaining roads through this open territory which is generally free from heavy grades. The country lying between the Missouri River and Denver does not present difficulties in railroad building or maintenance substantially greater than are presented by the territory between the Mississippi and Missouri rivers. Generally the density of traffic is less west of the Missouri River and there are other reasons why rates may reasonably be higher in that territory.

The first class rate from New York City to Chicago, nearly 1,000 miles, is 75 cents; from Chicago to Omaha, 500 miles, 80 cents; from the Missouri River to Denver, short line 538 miles, \$1.25; and from Denver to Ogden, 600 miles, \$1.64. The traffic manager of the Union Pacific Railroad was asked how, in view of the established scale of rates east of the Missouri River, he could justify his rates under consideration west of that river, and replied that the lower basis in force in the east was due to greater density of traffic and greater earnings.

We found in the *Spokane case*, with reference to the Great Northern and Northern Pacific railways, that the traffic and earnings of those transcontinental lines compare favorably with the strongest lines in the east. It may be instructive to state these facts with respect to the Union Pacific Railroad. For that purpose and for use in further considering the general reasonableness of these rates we give below two tables, the first showing gross earnings per mile, net earnings per mile, and ton-miles per mile upon all railroads of the United States, both as a whole and by the territorial groups as defined for statistical purposes, the Union Pacific being principally in groups seven and eight, and the second showing these same facts with respect to the different lines, including the Union Pacific, reaching Denver from the east.

## YEAR ENDED JUNE 30, 1906.

Group.	Gross earnings per mile of road.	Income from operation per mile of road.	Number of tons carried 1 mile per mile of road.
Group I.....	\$15,528	\$4,579	743,634
Group II.....	22,517	7,641	2,443,924
Group III.....	13,789	4,068	1,713,615
Group IV.....	8,216	3,002	879,506
Group V.....	7,350	1,981	640,486
Group VI.....	6,690	3,136	811,977
Group VII.....	9,104	4,184	767,530
Group VIII.....	6,885	2,325	506,392
Group IX.....	5,848	1,553	421,150
Group X.....	9,532	4,166	572,574
United States, average.....	10,460	3,548	982,401

## YEAR ENDED JUNE 30, 1907.

Atchison, Topeka & Santa Fe Ry.....	\$11,092.64	\$4,266.50	821,068
Chicago, Burlington & Quincy R. R.....	9,218.28	2,653.70	802,722
Chicago, Rock Island & Pacific Ry.....	7,964.58	2,433.95	549,962
Missouri Pacific Ry.....	6,620.41	1,909.80	569,380
Union Pacific R. R.....	15,144.12	6,547.99	1,146,918

The last table is for the year 1907, the first for the year 1906. The figures for 1907 somewhat exceed those for 1906, and for purposes of comparison we state here corresponding figures as to the Union Pacific for the year 1906.

In that year the ton-miles were 1,081,431, showing a density of traffic considerably in excess of the average for the whole United States and materially in excess of every territorial group except Group II and Group III. The gross earnings from operation were \$13,465 per mile, exceeding by more than 25 per cent the average for the entire United States, substantially equaling Group III, and exceeded only by Groups I and II. Its net earnings from operation were \$5,962 per mile, exceeding by 75 per cent the average of the entire United States, and materially exceeding those for every group except Group II.

The Union Pacific Railroad Company, according to its operating report of June 30, 1907, embraces 1,901 miles of main track and 1,092 miles of branch lines, making a total of 2,993 miles. Its bonded indebtedness is \$100,000,000, at 4 per cent, being about \$33,000 per mile. Its common stock outstanding is \$195,000,000, its preferred stock \$100,000,000, making a total of \$295,000,000, or \$98,000 per mile. The report states that these stocks have been issued for the purpose of purchasing other stocks and that the amounts mean nothing when given in miles of road.

During the year covered by this report the road earned from operation \$15,000 per mile, and its net income from operation was \$6,547 per mile, or a total of \$19,678,798. After deducting interest on \$100,000,000 of funded debt and taxes, there would still remain from operation over \$14,000,000, or 14 per cent upon \$100,000,000 of capital stock. These sums, \$200,000,000, would equal about \$70,000 per mile for the system, and, without doubt, more than represent the fair value of the property upon the basis of cost of construction or of cost of reproduction.

As already suggested, we can not in determining a competitive rate select that railroad which is the shortest or the most advantageously situated and limit the rate to what would allow that property fair earnings. We must consider this entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving these Colorado common points via reasonably direct lines.

Four different railway systems other than the Union Pacific reach Colorado common points from the Missouri River, namely, the Burlington, the Rock Island, the Santa Fe, and the Missouri Pacific. These defendants were asked to give the Commission some idea of the density of traffic upon their lines between the Missouri River and Denver. Their statistics are kept in such a manner that they were

unable to furnish us the exact information desired, but they have given certain statistics which perhaps answer the same general purpose. Below is a table showing the total tons of freight from the Missouri River and points east to Colorado common points for the years 1899 to 1906, inclusive. It will be seen that the total tonnage is not large, but that there has been a substantial increase from 1899 to 1906. The apparent decrease from the years 1901, 1902, and 1903 was accounted for by traffic officials by the fact that certain construction work under way in Colorado during those years required the transportation of an unusual quantity of materials. The increase in Colorado business has not been as marked as in the general business of the transcontinental lines.

*Westbound tonnage into Colorado from Missouri River and east thereof in tons.*

1899-----	281, 379	1903-----	438, 025
1900-----	351, 871	1904-----	364, 637
1901-----	454, 732	1905-----	364, 145
1902-----	506, 923	1906-----	436, 453

We were also furnished with statements showing the number of trains operated over various lines between Denver and the Missouri River, and one system was able to give us its tonnage and earnings by states. From all of this it fairly appears that the density of traffic on these lines from the Missouri River to Denver, except the Union Pacific upon the north and the Santa Fe upon the south, is not heavy, and that this is particularly true of the last two or three hundred miles before reaching Colorado common points. The earnings upon this portion of the various systems are comparatively small. This is not, however, conclusive upon the reasonableness of rates now in effect. These lines must be considered in the nature of branch lines. The profit from this business does not accrue upon the 200 or 300 miles of railroad where it is the major part of the traffic, but upon the haul up to the Missouri River, where it is in the nature of surplus traffic.

In the *Burnham, Hanna, Munger case, supra*, we found that the defendant carriers had for years maintained a line of proportional class rates between Chicago and the Twin Cities, applicable on traffic from the Atlantic seaboard, one-third less than their local class rates between Chicago and the Twin Cities, and that their local rates had not thereby or therefore been pulled down or reduced. We can not accept the theory that if in this case the through rates from Chicago and St. Louis to Denver are reduced, like reductions in the local rates from Chicago or St. Louis to the Missouri River or from the Missouri River to Denver must automatically follow. If rates applicable only to through business and that are materially lower than the local rates can be maintained between Chicago and St. Paul, and in the many other instances which could be cited where the carriers adopt and

maintain the same principle, without forcing reductions in the local rates it is obvious that the same thing can be done between Chicago and the Missouri River or between Chicago and Denver. As has been seen, the class rates from the Missouri River to Denver, short-line distance 538 miles, are on a scale of \$1.25 per 100 pounds, first class, and from Denver to Utah common points, about 650 miles, they are on a scale of \$1.64 per 100 pounds, first class. Measured by any test these rates are in both instances unreasonable and excessive. It seems obvious that they must be revised, either by voluntary action of the carriers in conformity with the principles announced in the *Spokane case, supra*, or in some other proceeding before this Commission. For that reason no reduction of those rates will be ordered in this case, although upon the record we are convinced that they are unwarrantedly high, and that reasonable reduction therein would not work any undue reduction in the revenues of defendants. If those rates are reduced so that the combination on the Missouri River or on Denver results in reasonable through rates it does not necessarily follow that these through rates must again be reduced. Certainly it is better in every instance where important readjustment of rates is necessary to have it worked out by the carriers or with their cooperation if that be possible.

The present class rates from Chicago to the Missouri River are, in cents per 100 pounds, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	80	65	45	32	27	32	27	22	18½	16

The present class rates from Chicago to Denver are, in cents per 100 pounds, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	205	165	125	97	77	92	72	62	53½	46

being made up of the sums of the class rates from Chicago to the Missouri River crossings, as above, and the class rates from the Missouri River to Denver, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	125	100	80	65	50	60	45	40	35	30

The present class rates from St. Louis to Denver are, in cents per 100 pounds, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	185	145	115	92	72	84½	64½	57	48½	41

being made up of the class rates from St. Louis to the Missouri River, in cents per 100 pounds, as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	60	45	35	27	22	24½	19½	17	13½	11

and the above-named class rates from the Missouri River to Denver.

As hereinbefore stated, we find that this rate adjustment is unjustly discriminatory in favor of the Missouri River cities and against Denver. The through class rates from Chicago to Denver and from St. Louis to Denver are unreasonably high in and of themselves. The reduction of those rates as herein ordered will not involve any unreasonable or undue reduction of the revenues of the defendants affected thereby, and for these reasons and upon the whole record we are of the opinion that for the future reasonable class rates from Chicago to Denver should not exceed, in cents per 100 pounds, the following:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	180	145	110	85	67	80½	63	54	47	40

and that reasonable class rates from St. Louis to Denver should not exceed, in cents per 100 pounds, the following:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	162	127	101	80½	63	74	56	50	42	36

No reparation will be awarded under these findings.

An order will be entered in accordance with these views.

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No. 1674.

INDIANAPOLIS FREIGHT BUREAU

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

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No. 1835.

INDIANAPOLIS FREIGHT BUREAU

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted March 1, 1909. Decided March 8, 1909.*

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Complaint alleges unjust discrimination against Indianapolis in that the long-established relationship of rates between Indianapolis on the one hand and St. Louis and the Ohio River crossings on the other hand has been departed from in adjusting rates on sugar and on coffee from New Orleans and from Atlantic seaboard points to Indianapolis and to St. Louis and the Ohio River crossings; *Held:*

1. That departure from the former relationship of rates on sugar from New Orleans to Indianapolis and to St. Louis and the Ohio River crossings is not unjustly discriminatory against Indianapolis, because the rates on sugar from New Orleans to St. Louis and to the Ohio River crossings are controlled by potential water competition; but that it is unjustly discriminatory against Indianapolis to depart from the former relationship of rates on coffee as between Indianapolis and St. Louis and the Ohio River crossings, because such rates on coffee are not controlled by the water competition.
2. That rates on sugar from Atlantic seaboard points to St. Louis and the Ohio River crossings are controlled by the water-controlled rates from New Orleans and that therefore it is not unjustly discriminatory against Indianapolis to depart from the former relationship of rates on sugar from Atlantic seaboard points to Indianapolis and to St. Louis and the Ohio River crossings; but that it is unjustly discriminatory against Indianapolis to depart from the former relationship of rates on coffee as between Indianapolis and St. Louis and Ohio River crossings, which are not so controlled by water competition.

*Edward E. Gates* for complainant.

*George Stuart Patterson* for Pennsylvania Railroad Company; Pennsylvania Company; Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, and Vandalia Railroad Company.

*Clyde Brown* for New York Central & Hudson River Railroad Company; Lake Shore & Michigan Southern Railway Company;  
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Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Michigan Central Railroad Company, and Lake Erie & Western Railroad Company.

*Kretzinger, Gallagher & Rooney* for Grand Trunk Western Railway Company.

*Ed. Baxter* and *S. F. Andrews* for Illinois Central Railroad Company and Indianapolis Southern Railroad Company.

#### REPORT OF THE COMMISSION.

##### CLARK, *Commissioner*:

Central Freight Association territory, hereinafter called C. F. A. territory, is comprehensively and simply described as that territory lying west of a line drawn from Buffalo to Pittsburg and east of a line drawn from Chicago to St. Louis, and north of the Ohio River.

For the purpose of making rates from the Atlantic seaboard this territory has for many years been divided into zones, each zone taking a certain percentage of the New York-Chicago rates, in the fixing of which percentage consideration is given to the distance from New York. Out of this system of rate adjustment have grown well-established rate relationships between the different cities in C. F. A. territory.

On August 1, 1908, the defendants in case No. 1674 advanced the carload rates on coffee 3 cents per 100 pounds and on sugar 2 cents per 100 pounds, from Atlantic seaboard points to Chicago, and to points in C. F. A. territory lying west of an imaginary line drawn from Michigan City, Ind., southeastwardly to a point near Louisville, Ky., including Indianapolis, and excepting St. Louis, Cairo, Evansville, Cincinnati, Louisville, and other Ohio River crossings, hereinafter called the Ohio River crossings. This departure from the long-established relationship of rates in C. F. A. territory caused the complaint in case No. 1674.

Effective July 15, 1908, defendants in case No. 1835 increased the carload rate on coffee 3 cents per 100 pounds, and on sugar 2 cents per 100 pounds from New Orleans to Chicago and to points in C. F. A. territory lying west of said imaginary line from Michigan City to Louisville, excepting St. Louis and the Ohio River crossings, to which points the rates on coffee were increased 2 cents per 100 pounds, while the rates on sugar remained unchanged.

Subsequent to the filing of the complaint in case No. 1674, to wit, on October 1, 1908, defendants in that case made advances in the rates on coffee and sugar from the Atlantic seaboard to all points in C. F. A. territory lying east of said imaginary line, still excepting St. Louis, and the Ohio River crossings; so that the relationship of rates to points in C. F. A. territory from the Atlantic seaboard was reestablished except as to St. Louis and the Ohio River crossings. The

rates on coffee were advanced 2 cents per 100 pounds to the Ohio River crossings, while the rates to those points on sugar remained unchanged. No change was made in the rates to St. Louis on either coffee or sugar.

Effective October 15, 1908, defendants in case No. 1835 increased the rates on coffee and sugar from New Orleans to points in C. F. A. territory lying east of the imaginary line from Michigan City to Louisville, excepting the Ohio River crossings, and thus the former relationship of rates on coffee and sugar from New Orleans to points in C. F. A. territory was restored, excepting as to St. Louis and the Ohio River crossings.

Ever since the long-and-short-haul clause in the act was enacted defendants' rates from New Orleans to Indianapolis have been the same as to Chicago. In other words, rates have been made from New Orleans to Chicago and have been applied to points intermediate between Chicago and the Ohio River crossings.

The original complaint in case No. 1835 attacked this adjustment as unreasonable and as unduly discriminatory against Indianapolis. The rates themselves to Indianapolis were challenged as unreasonable in comparison with the rates to St. Louis and the Ohio River crossings. At the time of hearing these cases the relationship of rates on coffee and sugar to points in C. F. A. territory, both from the Atlantic seaboard and from New Orleans, had been restored excepting to St. Louis and the Ohio River crossings, and the cases were therefore heard on the understanding that the question brought in issue and to be determined was the alleged discrimination against Indianapolis created by the change in the relationship of rates on sugar and coffee from the Atlantic seaboard and from New Orleans as between Indianapolis on the one hand and St. Louis and the Ohio River crossings on the other hand.

Growing out of former competition of steamers on the river, competition of carriers crossing the river at different points, and competition between commercial centers served by carriers so crossing at different points, the custom was long ago established and has since been followed of making rates from points like New Orleans on the one hand and Chicago on the other, taken as representative, the same to each of the Ohio River crossings, and under that system the rates on coffee and sugar, respectively, from New Orleans to the Ohio River crossings have been the same.

It is to be borne in mind that consideration is now given to only the single question to which these cases were narrowed at the hearing, to wit, Is the present rate adjustment unduly discriminatory against Indianapolis and in favor of St. Louis and the Ohio River crossings?

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In case No. 1674 the Pennsylvania Railroad Company and the New York Central Lines are the principal defendants. In case No. 1835 the Illinois Central Railroad Company is the principal defendant. Whatever policy might be adopted by or whatever order may be entered against those defendants would necessarily control the action of competing lines. Neither of these defendants presented much evidence. The Illinois Central apparently rested its case entirely upon the controlling water competition, in so far as sugar is concerned, at St. Louis and the Ohio River crossings, and the trunk lines apparently rested their case entirely upon the controlling competition of the rates on sugar so established at St. Louis and the Ohio River crossings by the Illinois Central.

The effect of the changes in rates and in relationships between Indianapolis and St. Louis and the Ohio River crossings is shown in the following table:

From New Orleans, La., to—	Prior to July 15, 1908.		Effective July 15, 1908.	
	Coffee.	Sugar.	Coffee.	Sugar.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Chicago, Ill. ....	22	23	25	25
Indianapolis, Ind. ....	22	23	25	25
Cincinnati, Ohio. ....	22	18½	24	25
Louisville, Ky. ....	20	17	22	22
New Albany, Ind. ....	20	17	22	22
Evansville, Ind. ....	20	17	22	22
Cairo, Ill. ....	20	17	22	22
St. Louis, Mo. ....	20	17	22	22

Tariff references: Ill. Cent., I. C. C. No. B-3603 and I. C. C. No. 3187.

From New York, N. Y., to—	Basis.	Prior to Aug. 1, 1908.		Effective Aug. 1, 1908.		Effective Oct. 1, 1908.	
		Coffee.	Sugar.	Coffee.	Sugar.	Coffee.	Sugar.
	<i>Per cent.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Chicago, Ill. ....	100	27	26	30	28	.....	.....
Indianapolis, Ind. ....	93	25	24	28	26	.....	.....
Cincinnati, Ohio. ....	87	23	23	(a)	(a)	25	.....
Louisville, Ky. ....	100	27	26	(a)	(a)	29	.....
New Albany, Ind. ....	100	27	26	(a)	(a)	29	.....
Evansville, Ind. ....	110	30	29	(a)	(a)	32	.....
Cairo, Ill. ....	120	32	31	(a)	(a)	34	.....
St. Louis, Mo. ....	117	32	30	(a)	(a)	(a)	(a)

a No change.

Tariff references: Pa. R. R., I. C. C. G-2610, 393; N. Y. C. & H. R., I. C. C. B-6043; C. R. R. of N. J., I. C. C. K-8000; Erie R. R., I. C. C. 6595.

Complainant argues that the relationship of rates between Indianapolis and the Ohio River crossings is unfair to Indianapolis on the basis of the length of the haul. It calls attention to the fact that

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the mileage to Indianapolis is 106 per cent of the mileage to Louisville, and the rates to Indianapolis are 147 per cent of the rate to Louisville on sugar and 114 per cent of the rate to Louisville on coffee, while the distance to Cincinnati is 107 per cent of the Louisville mileage and the rate to Cincinnati is 109 per cent of the Louisville rate.

Complainant alleges that Indianapolis dealers and jobbers find their strongest competition with dealers and jobbers located at St. Louis, Evansville, Louisville, and Cincinnati, and that therefore the changed relationship in rates in favor of St. Louis and the Ohio River crossings restricts Indianapolis dealers' ability to distribute sugar and coffee. It is also pointed out that a jobber's or wholesaler's ability to sell groceries largely depends upon his ability to sell sugar, which is a leading staple article and which is handled on the narrowest margins of profit, and frequently at no profit at all.

Complaint is made of the disturbance of the previously established relationship between points in C. F. A. territory in rates from the Atlantic seaboard. Reference to the table will show that rates on sugar and coffee were lower from New Orleans than from New York to any of the points in question, both before the advances were made and subsequent thereto.

Sugar is sold by the refiners to jobbers and dealers on a somewhat unusual basis. The record here shows that sugar is generally sold on a freight-prepaid basis; that there is no prevailing custom of selling sugar f. o. b. at the refinery; and that the principal dealer in sugar at Indianapolis secures his sugar laid down at Indianapolis at the same cost to him since the increase in rates as before that increase. He states that he demanded an f. o. b. price at New York, and that rather than to sell in that way the refiners agreed to lay his sugar down to him in Indianapolis on the previously prevailing 23-cent-rate basis.

Because of this defendants argue that the increase in question is not a matter of importance or moment to the complainant. Complainant properly replies that shippers and the Commission must deal with these matters from the standpoint of the lawful tariffs; that it has no means of knowing how long the sugar refiners will be willing to continue their present practice, and no means of knowing whether or not the same practice is indulged in with its neighbors and competitors. Manifestly, the Commission must deal with the question from the standpoint of the lawful tariff rates. The act prohibits the dismissal of any complaint because it is not shown that the complainant is damaged.

Sugar is sold on the basis of the market price, which is the same at New Orleans and at New York, plus the freight rate from the  
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nearest refinery. It will thus be seen that the jobber and dealer at St. Louis or at the Ohio River crossings can lay sugar down at those points at a less cost than it can be laid down in Indianapolis. Complainant shows that distributing rates are such that St. Louis and the Ohio River crossings, respectively, can retail sugar more than halfway to Indianapolis and in some instances at points beyond Indianapolis. Those, however, are questions upon which full testimony was not taken, and they are outside of the question to be here determined.

The principal witness for defendants in case No. 1835 testified that the rate on sugar from New York to Chicago was fixed by rail-and-lake lines and that the rate so fixed controlled the rate to Chicago which the lines from New Orleans could secure. The rail-and-lake rate from New York to Chicago is 25 cents; all rail it is 28 cents. The rail-and-lake rate of 25 cents is also the rate from New Orleans to Chicago; and this witness testified that even if there were no rail-and-lake lines the lowest rate on sugar from New York to Chicago could not be exceeded from New Orleans to Chicago. A statement that has been furnished at our request shows that during the year 1908 approximately 130,000 tons of sugar moved from New York and Philadelphia to western points via rail and lake.

A traffic man of many years of experience testified that the southern lines could not advance their rates on sugar to St. Louis and to the Ohio River crossings without losing that traffic. Formerly, and for many years, the sugar moved from New Orleans to St. Louis and to the Ohio River crossings by steamers. The prevailing rate was about 12 or 13 cents per 100 pounds. The rail carriers succeeded in getting but little of the sugar traffic until they reduced their rate to 15 cents per 100 pounds to the Ohio River crossings, and under that rate and since that time they have had substantially all of this sugar traffic. The rate on sugar to the Ohio River crossings from New Orleans was subsequently increased to 17 cents per 100 pounds, but for the purpose of paying back to the sugar refiners 2 cents per 100 pounds for a so-called cartage allowance, which had been established at New York, and which, in its opinion on that subject, 14 I. C. C. Rep., 619, the Commission condemned as unlawful.

It is shown that during the years 1897 to and including 1901, and while the rail rate was 20 cents, 65 per cent of the sugar from New Orleans to St. Louis and Ohio River points moved by boat.

It is not claimed that sugar is now transported by steamer from New Orleans to St. Louis or to the Ohio River crossings, but it is alleged that to increase the rate from New Orleans to those points 2 cents per 100 pounds would, in all probability, lead to a diversion of this traffic to barge lines established on the rivers for that purpose,

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and that the water competition so restored would be lasting and controlling. It is shown that a substantial quantity of freight is now transported on these rivers. On this point, in answer to a question if, in his judgment, an increase in the rate to the river towns would restore the river competition, the freight traffic manager of the Illinois Central testified:

I am sincerely of that opinion, and it is the result of judgment based on the coldest of experience, and I believe it would not only result in the reestablishment of water competition by boat and by barge, but that it would be on a stronger basis than ever before. I believe the sugar interests would organize a company that would stay on the river as long as the river flowed, and I want to again emphasize there the competition southbound as well.

A letter from a general traffic officer of one of the trunk lines from the Atlantic seaboard was introduced by complainant, in which it was suggested that rates on sugar and coffee from the Atlantic seaboard to points in the western part of C. F. A. territory are largely controlled by the rates from New Orleans and other Gulf ports. It thus seems that one traffic officer expresses the view that the New York-Chicago rate controls the New Orleans-Chicago rate, and another traffic officer expresses the view that the rates from the Atlantic seaboard to western C. F. A. territory are controlled by the rates from New Orleans. It appears, however, that the lowest New York-Chicago rate is also the New Orleans-Chicago rate.

It also appears that there is an available ocean-and-rail rate on sugar from New York to Indianapolis of 24 cents, as compared with the present all-rail rates of 26 cents from New York and 25 cents from New Orleans. It does not, however, appear why the ocean-and-rail rate does not get the business, unless it be because, as already stated, the refiners have been giving the Indianapolis dealers the benefit of the former 23-cent rate.

In making their increases on coffee defendants in case No. 1835 advanced the rates to St. Louis and to the Ohio River crossings 2 cents per 100 pounds. To Indianapolis and other points in C. F. A. territory they advanced them 3 cents per 100 pounds. Defendants' witness was not able to explain why this was so.

Defendants in case No. 1674 advanced their rates on coffee 2 cents per 100 pounds to the Ohio River crossings, 3 cents per 100 pounds to other points in C. F. A. territory, and made no increase to St. Louis. Their witness was unable to explain why corresponding increase was not made to St. Louis, but in argument it is stated that no increase was made to St. Louis because the eastern lines felt that the differential between their rate on coffee to St. Louis and the rate from New Orleans to St. Louis was too wide. It will be noted that prior to August 1, 1908, the rate on coffee from New York to St. Louis was

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32 cents and from New Orleans to St. Louis 20 cents; that subsequent to October 1, 1908, the rate from New York to St. Louis is still 32 cents, and from New Orleans to St. Louis 22 cents.

Complainant shows strong competition in the coffee trade from Toledo, where a large roaster is operated, and that by a proportional rate from Toledo to St. Louis a combined rate equal to the through rate from Atlantic seaboard points to St. Louis is made to apply from the Atlantic seaboard to St. Louis via Toledo, with a stoppage in transit for roasting at Toledo. Obviously an increase in the rate to Indianapolis unaccompanied by corresponding increase to St. Louis narrows Indianapolis's ability to compete, not only with St. Louis, but with Toledo as well.

Defendants in case No. 1674 assert that they can not make further advances in their rates on sugar and coffee to St. Louis and the Ohio River crossings because of the rates fixed at those points by the southern lines from New Orleans. They contend that the spread between their rates and the New Orleans rates is now as wide as they can make it without losing the business. It is admitted that for probably twenty years the percentage adjustment of rates from the Atlantic seaboard to these river towns has been maintained the same as to other points in C. F. A. territory. It is intimated and presumed that if the southern lines increased their rates on coffee and sugar from New Orleans to the Ohio River crossings corresponding increases would be made by the eastern lines from the Atlantic seaboard. As before stated, the southern lines contend that they can not increase their rates to the river crossings without forcing the traffic onto the water and thus losing it.

It is admitted that water transportation on the rivers does not control the rates on coffee, and that if previously established relationship of these rates were restored that traffic would not, as a result, be moved by boat.

Complainant argues that there is no justification for carriers to now disregard the long-established basis of making rates to points in C. F. A. territory, but unless the rate on sugar from New Orleans to the river crossings is increased it is difficult to see how the eastern lines from the Atlantic seaboard could increase their rates to those points except at the price of going out of that business. As already noted, the rates on sugar from the Atlantic seaboard to those points are higher than from New Orleans. The differences in favor of New Orleans are: At Louisville, 9 cents; at Cincinnati, 4½ cents; at Evansville, 12 cents; at Cairo, 14 cents; and at St. Louis, 13 cents.

The history of the rates on sugar and coffee from New York to Chicago shows that from 1900 to 1905 the rate was the same on both commodities, to wit, 30 cents per 100 pounds. In 1905 the rate on

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sugar was made 26 cents, and that on coffee 27 cents. In 1908 the rate on sugar was made 28 cents, and that on coffee 30 cents. As before noted, prior to the increases of 1908 the rate on coffee from New York to St. Louis was 32 cents; is now 32. From New Orleans to St. Louis the rate was 20; is now 22 cents. From New York to Indianapolis the rate was 25 cents; is now 28 cents. From New Orleans to Indianapolis the rate was 22 cents; is now 25 cents.

In *Interstate Commerce Commission v. Alabama Midland Ry. Co.*, 168 U. S., 172, it was said:

There is no suggestion in the evidence that the traffic managers who represent the carriers that are members of that association are incompetent or under the bias of any personal preference for Montgomery or prejudice against Troy that has led them, or is likely to lead them, to unjustly discriminate against Troy. When the rates to Montgomery were higher a few years ago than now, actual active water-line competition by the river came in, and the rates were reduced to the level of the lowest practical paying water rates, and the volume of carriage by the river is now comparatively small, but the controlling force of that water line remains in full force, and must ever remain in force as long as the river remains navigable to its present capacity.

In *Louisville, etc., R. R. Co. v. Behlmer*, 175 U. S., 670, it was said:

What was decided in the previous cases was that under the fourth section of the act substantial competition which materially affected transportation and rates might under the statute be competent to produce dissimilarity of circumstances and conditions, to be taken into consideration by the carrier in charging a greater sum for a lesser than for a longer haul. The meaning of the law was not decided to be that one kind of competition could be considered and not another kind, but all competition, provided it possessed the attributes of producing a substantial and material effect upon traffic and rate making, was proper under the statute to be taken into consideration. Indeed, if the distinction contended for was sound, it would follow that the greater and more material competition would be without weight in determining whether a dissimilarity of circumstances and conditions existed while the lesser competition would be potential for such purpose.

In *East Tennessee, etc., Ry. Co. v. I. C. C.*, 181 U. S., 18, the court said:

The only principle by which it is possible to enforce the whole statute is the construction adopted by the previous opinions of this court; that is, that competition which is real and substantial, and exercises a potential influence on rates to a particular point, brings into play the dissimilarity of circumstance and condition provided by the statute, and justifies the lesser charge to the more distant and competitive point than to the nearer and noncompetitive place, and that this right is not destroyed by the mere fact that incidentally the lesser charge to the competitive point may seemingly give a preference to that point, and the greater rate to the noncompetitive point may apparently engender a discrimination against it. We say seemingly on the one hand and apparently on the other, because in the supposed cases the preference is not "undue" or the discrimination "unjust." This is clearly so, when it is considered that the lesser charge upon which both the assumption of preference and discrimination is predicated is sanctioned by the statute, which causes the competition to give rise to the right to make such lesser charge.

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A carrier may voluntarily make, under the force of controlling competition, rates which it might not be required to make.

Giving consideration to the actual and potential water competition at St. Louis and the Ohio River crossings, and confining ourselves to the only question here considered, to wit, the relationship between Indianapolis and said points, we are forced to the conclusion that the defendant carriers in case No. 1835 did not unjustly discriminate against Indianapolis and in favor of said points by failure to increase rates on sugar to St. Louis and the Ohio River crossings at the same time and to the same extent that the rates to Indianapolis were increased. We conclude that it was unjust discrimination against Indianapolis to increase the rates to that point on coffee and to fail to make corresponding increases to St. Louis and the Ohio River crossings, and we find that the relationships between the rates on coffee from New Orleans to Indianapolis on the one hand and from New Orleans to St. Louis and the Ohio River crossings on the other hand which obtained prior to July 15, 1908, should be restored.

Again giving consideration to the water competition and the effect and control it has upon and over the rates on sugar from New Orleans to St. Louis and the Ohio River crossings, and to the competition between carriers thus created and controlled, we are not able to find that defendant carriers in case No. 1674 unjustly or unlawfully discriminated against Indianapolis and in favor of St. Louis and the Ohio River crossings by failing to increase rates on sugar to said points at the same time and to the same extent that increase was made to Indianapolis. As to the rates on coffee from Atlantic seaboard points, we find that it was unjustly discriminatory against Indianapolis and in favor of St. Louis and the Ohio River crossings to ignore and depart from the long and well established relationship of rates as between Indianapolis on the one hand and St. Louis and the Ohio River crossings on the other hand. We find that the relationships of rates on coffee from Atlantic seaboard points to Indianapolis and to St. Louis and the Ohio River crossings which obtained prior to August 1, 1908, should be restored.

15 I. C. C. Rep.

No. 1126.  
WYMAN, PARTRIDGE & COMPANY ET AL.  
v.  
BOSTON & MAINE RAILROAD ET AL.

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*Submitted March 6, 1909. Decided March 13, 1909.*

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In pursuance of the suggestion of the Commission in the original proceeding herein, the carriers arranged to incorporate certain provisions in their tariffs in regard to marine insurance on the lakes; complainants filed supplemental petition setting forth that under this arrangement they did not receive the protection which had formerly been secured by their policies of insurance and asking that the matter be further considered. For reasons stated in the decision an order will be made requiring the carriers to cease and desist from tendering to shippers a contract of shipment containing conditions opposed to their tariffs, and carriers will be required to tender a bill of lading which is consonant with their tariffs in this respect. Carriers allowed until April 20, 1909, in which to modify their tariffs in accordance with the views expressed.

*Fred B. Dodge* for complainants.

*H. C. Barlow* for Chicago Association of Commerce, intervener.

*George Stuart Patterson, William S. Montgomery, and George W. Kretzinger* for defendants.

REPORT OF THE COMMISSION ON APPLICATION FOR REHEARING.

PROUTY, *Commissioner*:

This is an application to reconsider and modify the action of the Commission previously taken in this proceeding, 13 I. C. C. Rep., 258.

In disposing of the case originally the Commission said that an order would be issued restoring the former rates unless the defendants "have previously tendered a contract of shipment under which the shipper receives the same protection which he formerly had under his policy of marine insurance, and make the necessary changes in their tariffs if any are required." In pursuance of this suggestion it was finally arranged that the carriers should incorporate in their tariffs the following provision:

While shipments carried under this tariff are water borne between lake ports on the vessels of a lake line party hereto, the lake carrier and the rail carrier delivering the property to the lake carrier jointly assume liability for loss or



damage to said shipments caused by marine perils, to wit: Of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, and bar-ratry of the master or mariners, excluding risks of riots, war, or insurrection; any loss from said marine perils for which the lake line and the rail line delivering to the lake line are liable hereunder to be paid sixty days after proof of loss and proof of interest in said property are furnished said company.

They were to further incorporate in the bills of lading these words:

While property carried under this bill of lading is water borne between lake ports on the vessels of the lake carrier, the lake carrier and the rail carrier delivering this property to the lake carrier jointly assume liability for loss or damage from marine perils as described in the tariff which governs this shipment, and agree to pay any loss from said marine perils for which the lake line and the rail line delivering to the lake line are liable hereunder sixty days after proof of loss and proof of interest in said property are furnished to said companies.

Upon learning the exact terms of the provisions to be incorporated in tariff and bill of lading, respectively, the complainants filed a petition setting forth that under this arrangement they did not receive the protection which had formerly been secured by their policies of insurance and asking that the matter be further considered. This petition was not filed until June 25, 1908, when the season of navigation was already far advanced, and, on the whole, it seemed best not to interfere with the arrangement which had gone into effect during that season, but to consider the matter after the close of navigation and before the opening of the next season, in the light of actual experience. The petition was accordingly held in abeyance during the summer. Since then the matter has been further heard and argued.

The complainants claim, first, that the provision in the tariff would not, were it binding upon the carriers, afford the same advantage as did the contract of marine insurance, and, second, that as the business has been conducted this provision has not been obligatory upon the defendants.

The particulars in which the above provision is claimed to fall short of the insurance policy may be first noted:

(a) It is said that the tariff provision only covers perils of the sea while the traffic is being borne from port to port upon the Great Lakes; that it may be carried en route upon canals, rivers, and other waters, and that the liability of the carrier should extend to all water transportation.

The only water carriage of which this Commission has heard in connection with these rail-and-lake tariffs is that upon the Great Lakes, and we see no good reason why this provision should be extended to other waters. This objection is not sustained.

(b) The complainants insist that the tariff provision should specify as one of the perils of the sea "general average charges and expenses for which the owner may under the maritime law be chargeable."

It would seem reasonably certain that general average is one of the incidents of water transportation against which this provision in its present form would protect the shipper. But since the complainants undoubtedly make the objection in good faith, and since to sustain that objection will put the defendants to no trouble or expense beyond that of reissuing or supplementing these tariffs, we are of the opinion that the request of the complainants should be complied with and that these words should be incorporated into the tariff.

(c) Marine policies of insurance generally provide that losses shall be payable in thirty days after proof has been made. The time provided by the carriers is sixty days. It is claimed that the time provided within which the carriers are to make payment should be reduced to thirty days. The matter is not one of great importance; sixty days does not seem to be an unreasonable time within which to make such payment, and we are not inclined to require a modification of this provision.

(d) The complainants insist that the phrase "between lake ports" does not give the shipper indemnity while the vessel is lying at the port. Without inquiring whether this objection is well taken, we think that all possible doubt should be removed by employing the words "at and between" instead of "between," as suggested by the complainants.

(e) Several of the complainants were accustomed to take out insurance which covered not only the voyage but a subsequent period after the goods were unloaded upon the dock. The length of time covered by this dock insurance varied from twenty-four hours to several days. It is objected that the present provision carries with it no protection upon the dock.

Apparently, a lake carrier, after the goods are removed from the vessel and placed in the warehouse upon the dock, stands with respect to those goods like a carrier by rail. It would be responsible for loss until reasonable opportunity had been given the owner in which to remove the property. We see no reason why there should be a different provision in this case from that which applies to the rail carrier. If the shipper is so situated that he can not conveniently remove the goods within a reasonable time, and therefore requires dock insurance, there is no hardship in compelling him to pay for such protection, according to the length of time for which it is needed. This objection is not sustained.

(f) Marine policies frequently provide that in case of loss settlement shall be upon the basis of the invoice price plus 10 per cent. The carrier would stand liable only for the value of the goods. The complainants therefore insist that the indemnity afforded by the contract of shipment is not as broad as that afforded by the insurance policy.

It is difficult to see how these carriers could or should be compelled to pay more than the actual value of the goods at the time and place of the loss. If the shipper in fact obtained by paying a premium upon a sum in excess of the actual value an advantage to that extent, which he does not obtain under this contract of shipment, that would nevertheless seem to be a kind of advantage which we can not properly require to be equalized. This objection is not sustained.

(g) The contract of shipment provides that the water carrier and the rail carrier making delivery to the water carrier shall be jointly liable for the loss. The complainants urge that this liability should be joint and several.

The uniform bill of lading which is now in use and under which these shipments move provides that suit shall not be maintained on account of loss unless notice is given to the carrier within four months. It seems probable that failure to give notice to both carriers would prevent the maintenance of suit to enforce this joint liability against either one of them. The shipper ought to be allowed to look to either the lake carrier or the rail carrier or both and to perfect his right of action against one or both. We are inclined to sustain this objection and to hold that the liability ought to be joint and several, and so specified.

(h) The complainants call attention to the fact that if the shipper, not being satisfied with the protection furnished by the carrier, sees fit to place insurance on his own account, the fact that the carrier has already placed insurance upon this same property would, in the event of loss, either avoid the insurance of the shipper altogether or require him to accept a proportionate share of the amount insured.

We express no opinion as to whether the general insurance effected by the carrier for its own benefit would be such insurance as would vitiate or affect that placed by individual shippers upon individual shipments. The indemnity afforded by this contract of carriage is, in our opinion, of such a character that the shipper ought not to feel obliged to place additional insurance for himself. Should an occasional shipper do so the interest of the general shipping public, which, in our opinion, is better subserved under this plan than under the plan of individual insurance, must outweigh the inconvenience of occasional instances. This objection is not, therefore, sustained.

(i) Most marine policies contain the words "and all other perils or misfortunes that have or shall come to the hurt or damage of said property or any part thereof." These words are omitted from the tariff provision. The complainants insist that they should be incorporated, and call attention to certain cases in which it is held that damages of various kinds are included under this clause in the policy, which would not be embraced in "perils of the sea" without these additional words.

The defendants object to the incorporation of these words because, they insist, this tariff provision is in essence a contract of transportation which would be strictly construed against them, whereas in a policy of marine insurance the rule of construction is in favor of the underwriter. From this they argue that to use this clause in the tariff would impose upon them a liability which the same words, when found in the policy of insurance, do not affix to the insurance company.

It seems altogether probable that a court reading this language in connection with the context of this tariff provision, and having in view the manifest purpose which it is intended to subserve, would give to the words the same significance there which they had in the policy of insurance. At any rate this Commission would not be justified in forcing these complainants to take the chance involved in the holding for which the defendants contend. If the carriers are not satisfied with our decision they can restore the former rates and leave the complainants to purchase their insurance in the open market, while if the carriers elect to pursue the method indicated by the Commission the complainants must accept the schedule provision prescribed. For these reasons we hold that the tariff provision should contain these words.

We think, therefore, that the tariff provision should be modified to read as follows:

While shipments carried under this tariff are water borne at and between lake ports on the vessels of a lake line party hereto, the lake carrier and the rail carrier delivering the property to the lake carrier jointly and severally assume liability for loss or damage to said shipments caused by marine perils, to wit, of the seas and lakes, fire, collision, stranding, jettisons, pirates, assailing thieves, barratry of the master or mariners, and all other perils or misfortunes that have or shall come to the hurt or damage of said property or any part thereof, including general average charges and expenses for which the owner may under the maritime law be chargeable, but excluding the risks of riots, war, or insurrection; any loss from said marine perils for which the lake line or the rail line is liable hereunder to be paid sixty days after proof of loss and proof of interest in said property are furnished said company.

The arrangement approved by the Commission contemplated the incorporation of a provision similar to this in the tariffs under which the traffic was transported, and it also contemplated that the bill of lading or contract of shipment should contain an express condition that the lake line and the rail line making delivery to the lake line should stand responsible for and pay to the shipper these losses resulting from marine hazards. The final conclusion of the Commission was not reached until June 1, 1908. The period of navigation for that year was already far advanced. There was no time to secure the printing of new bills of lading and it was accordingly understood that this contract provision should be stamped upon the

old bills of lading with a rubber stamp. The testimony of the complainants tends to show that in much more than half the instances this stamp was not used. The defendants questioned the accuracy of this testimony, but there can be no doubt that in very many if not the majority of instances this notation did not appear upon the bill of lading.

During the latter part of the season what is known as the "uniform" bill of lading was used by the carriers. Section 9 of the conditions appearing upon this bill of lading provides that when the traffic is water borne the carrier shall not be responsible for perils of the sea. The shipper is required in all cases to sign this bill of lading, thereby expressly consenting to be bound by the conditions which appear upon it. The effect, therefore, was that these shippers had expressly agreed that they would make no claim upon the carriers for these damages for which it was expressly understood that certain carriers in the line were to stand responsible.

The attorney for the defendants suggests that the provision in the tariff must control, notwithstanding the bill of lading. This is not clear. The original idea of the Commission was that the contract of shipment should directly impose upon these carriers the burden of this responsibility. We are not disposed to recede from that position. We think the bill of lading or the contract of shipment under which this traffic moves should plainly state the liability assumed. Nor should the shipper be required to rely upon any rubber stamp. If the contract of shipment purports to contain the printed conditions under which the traffic moves, then this condition should be printed with the rest. Any other course of business will inevitably result in giving the shipper in many cases a defective contract.

There are two ways in which this may be accomplished. A lake bill of lading may be provided which states in its conditions the exact terms of the contract under which this traffic is carried. There would be no hardship in requiring the defendants to print and put into the hands of their agents such a bill of lading, and we are not impressed with the claim that an attempt to use separate bills of lading in the same office must result in confusion and mistake, provided a different-colored paper were used and the bill plainly marked "Lake traffic."

The second course is to modify the uniform bill of lading so as to cover the movement of this business, which, during the season of navigation, is of large volume. This we think would be accomplished by adding to the present ninth section these words:

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

We shall allow the carriers until April 20, 1909, in which to modify their tariffs in accordance with the views expressed. The necessary supplements may be filed upon three days' notice, but such supplements must contain nothing except this provision, and must bear notation that they are issued by authority of this decision.

An order will be made requiring the carriers to cease and desist from tendering to shippers a contract of shipment containing conditions opposed to their tariffs, and carriers will be required to tender a bill of lading which is consonant with their tariffs in this respect.

15 I. C. C. Rep.

No. 2069.

A. L. THOMAS

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY ET AL.

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*Submitted February 25, 1909. Decided March 8, 1909.*

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The combination through rate of 31½ cents per 100 pounds formerly applied by the defendants on carload shipments of vegetables from Green Bay, Wis., to Pattonsburg, Mo., found unreasonable, and reparation awarded complainant on the basis of the present reasonable rate of 22 cents per 100 pounds.

*A. L. Thomas* for complainant in person.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*W. C. Maxwell* for Wabash Railroad Company.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

On October 19, 1906, the complainant shipped a carload of vegetables, weighing 31,400 pounds, from Green Bay, in the state of Wisconsin, to Pattonsburg, in the state of Missouri. The movement was through Ottumwa, and charges were collected on the basis of the combination of a local carload rate of 9½ cents per 100 pounds to Milwaukee, and a rate of 22 cents from Milwaukee to destination on the actual weight of the shipment, making aggregate charges of \$98.91.

There was no joint through rate applicable to such movements from Green Bay to Pattonsburg over the lines of the defendants. There was, however, a joint through rate of 22 cents per 100 pounds in effect over other and competing lines; and on December 19, 1907, the defendants established over the route of this movement a joint through rate of 22 cents on the commodity in question, with a carload minimum of 24,000 pounds. The complainant contends that this would have been a proper rate at the time the shipment was made, and the

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defendants admit that the combination rate of  $31\frac{1}{2}$  cents that was applied thereon was unreasonable and excessive.

Upon the facts appearing of record, and testing the rate complained of by the rate then in force over other lines, we find that the combination rate of  $31\frac{1}{2}$  cents was unreasonable and ought not to have exceeded the lower joint through rate subsequently established by the defendants, and that the complainant is entitled on that basis to reparation amounting to \$29.83, with interest thereon at the rate of 6 per cent per annum from October 24, 1906, the date on which the charges were paid. We also find that for the future the rate on vegetables from Green Bay to Pattonsburg ought not to exceed 22 cents per 100 pounds upon a minimum carload weight of 24,000 pounds.

It will be so ordered.

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No. 1477.

## BAINBRIDGE BOARD OF TRADE

v.

LOUISVILLE, HENDERSON &amp; ST. LOUIS RAILWAY COMPANY ET AL.

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*Submitted August 18, 1908. Decided April 5, 1909.*

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While complainant assails all rates from St. Louis, Mo., to Bainbridge, Ga., as unjust and unreasonable, the evidence relied upon to support that allegation is largely by way of comparison with other rates, especially with the rates to Eufaula, Ala., and incidentally with the rates to Albany, Ga. The real question involved is the alleged unjust discrimination against Bainbridge and undue preference in favor of Eufaula, by reason of which complainant claims that the Eufaula rates are the only just and reasonable ones to apply to Bainbridge; *Held*, That the circumstances and conditions obtaining at Eufaula are materially different from those surrounding Bainbridge, and that therefore the complaint should be dismissed.

*Russell & Hawes, W. C. Lane, and E. S. Longley* for complainant.  
*Ed. Baxter, W. G. Dearing, and Perkins Baxter* for Louisville, Henderson & St. Louis Railway Company and Louisville & Nashville Railroad Company.

*Sidney F. Andrews and Perkins Baxter* for Atlantic Coast Line Railroad Company.

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The complainant corporation has for its purpose the promotion and protection of the commercial interests of Bainbridge, Ga., and its membership is composed of merchants, manufacturers, and persons engaged in various lines of business at that place. The wholesale business of complainant is limited to three grocery houses.

The complaint assails all class and all commodity rates via the lines of the defendant common carriers, subject to the act to regulate commerce from St. Louis, Mo., to Bainbridge, Ga., as unjust and unreasonable; also charges unjust discrimination against Bainbridge and undue preference in favor of Eufaula, Ala., by reason of the adjustment of class and commodity rates from St. Louis, Mo., to the latter place, as compared with that from St. Louis to Bainbridge.

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Bainbridge has about 6,000 inhabitants and is located in southwestern Georgia on the lines of the Atlantic Coast Line and the Georgia, Florida & Alabama railroads. There are two through all-rail routes from St. Louis to that point: (a) The Louisville & Nashville to Montgomery and the Atlantic Coast Line from Montgomery, to Bainbridge, and (b) the Louisville & Nashville to Montgomery, Ala., the Central of Georgia to Cuthbert, Ga., and the Georgia, Florida & Alabama to Bainbridge. The rates via these routes are the same. Bainbridge is also located upon the Flint River, a tributary of the Apalachicola, which is formed by a junction of the Flint and Chattahoochee rivers at or near River Junction, Fla., and extending from thence to the Gulf of Mexico, thus making a waterway from St. Louis to Bainbridge that is navigable throughout the year.

It is also claimed that a rail and water route exists from St. Louis via the Mobile & Ohio Railroad to Mobile; thence through the Gulf of Mexico to Apalachicola, and from thence via the Apalachicola and Flint rivers to Bainbridge, as shown by Mobile & Ohio Railroad Company tariff, I. C. C. No. A-2; but the defendants assert that this tariff does not make a joint through rate and route; that if shipments under it are carried beyond Mobile, the shippers make the transfer to the boat lines. The contention is that this tariff applied to grain and grain products. An examination of the tariffs fails to disclose joint through rates applicable to any through rail and water route from St. Louis, Mo., or East St. Louis, Ill., to Bainbridge, via either New Orleans or Mobile. Agent Hall's tariff, I. C. C. No. 2, effective February 8, 1908, named rate of 12 cents on corn, oats, rye, and barley in carloads from St. Louis or East St. Louis to both New Orleans and Mobile, but there are no rates on file with the Commission from New Orleans or Mobile to Bainbridge applicable to said commodities via the Mobile & Gulf Steamship Company and the Callahan Line, as claimed by complainant. The rates on said products through Mobile apply via the Mobile & Gulf Steamship Company to Carrabelle, Fla., and the Georgia, Florida & Alabama Railroad from that point to Bainbridge, and are as per Mobile & Gulf Steamship tariff, I. C. C. No. 2—19 cents per 100 pounds from Mobile and 21 cents from New Orleans to Bainbridge.

Eufaula is located on the line of the Central of Georgia Railway, and also on the Chattahoochee River, about 135 miles north of the junction of the Chattahoochee and Flint rivers. It has a through all-rail route from St. Louis via the Louisville & Nashville to Montgomery and the Central of Georgia from that point to Eufaula. There are through routes made up of the Central of Georgia Railway and its connections from the north and northeast, all of which make the same rates from the

west as the Louisville & Nashville and the Central of Georgia. The inference from the testimony is that Eufaula has about the same number of business houses as Bainbridge engaged in distributing goods in that territory.

The rates from St. Louis to Eufaula are made the southeastern differentials (23 cents, first class) higher than the rates from the Ohio River crossings to Eufaula, except that the rates from Cincinnati, Ohio, are made the Montgomery differentials (10 cents, first class) higher than the rates from Louisville to Eufaula. In 1883 the Macon basis of rates from the west was established at Eufaula, Ala., and at Columbus, Ga., but prior to that time the rates to these points were made on the Montgomery combination. The establishment of the Macon basis of rates at Eufaula and Columbus was the result of complaints that the rates to those points were too high as compared with the rates to Macon on the east and to Montgomery on the west, as well as the competition of boat lines on the Chattahoochee River.

The class and commodity rates from St. Louis to Eufaula and to Bainbridge at the present time are joint through rates, but the evidence shows that formerly from St. Louis to Bainbridge the class rates were made by combination of the rates from St. Louis to Montgomery and established proportionals applying from Montgomery on traffic destined beyond, which were first established by the Plant system September 10, 1894. The basis which determined the amount of these proportional rates is not now obtainable.

The Alabama Midland Railway, running from Montgomery, Ala., to Bainbridge, Ga., was opened in 1890. It was afterwards taken over by the Plant system and is now a part of the Atlantic Coast Line system, successor to the Plant system. Prior to the establishment of the proportional rates by the Plant system, the rates from the west to Bainbridge were made on the lowest combination on Montgomery, Ala., Albany, Ga., or Brunswick, Ga. When the Macon basis of rates was established at Eufaula in 1883, there was a direct line of railway from Montgomery to Eufaula, but there was no way to reach Bainbridge except through Albany or some other eastern junction point. The route was made up of the Montgomery & Eufaula Railroad, now the Central Railroad of Georgia, and the Savannah, Florida & Western Railroad. The latter road is now a part of the Atlantic Coast Line system, running from Thomasville to Albany, Ga.

At the time of the hearing some traffic from St. Louis into Bainbridge had been handled by the steamers operating between Mobile and Bainbridge. The shipments, however, were not large and the route had been in use not more than sixty days. The rates into Bainbridge via this route, including transfer charge at Mobile, are considerably lower on all classes and commodities than the all-rail rate

from St. Louis to Bainbridge, with the possible exception of grain and grain products, and the difference in favor of the rail-and-water route is approximately 3 cents per 100 pounds.

The steamers plying on the Flint, Chattahoochee, and Apalachicola rivers charge by the package, and the rate is the same for any distance on the rivers. The two lines of steamers operating on those rivers do not compete with each other in all parts thereof. The line operating between Apalachicola and Eufaula and Columbus does not enter the Flint River; neither does the Callahan Line, running into Bainbridge, operate on the Chattahoochee River. Goods shipped from a point on the Chattahoochee River to a point on the Flint River are transferred from the Columbus & Eufaula Line to the Bainbridge Line at River Junction and the latter makes the delivery at the same rate as if the Columbus and Eufaula Line operated between point of origin and destination. The rate in such instance is divided equally between the originating and the delivering steamers. The same practice is resorted to when shipments are made from points on the Flint River to points on the Chattahoochee. Between Apalachicola and River Junction, however, there is open competition between the two lines of steamers.

While the complainant assails all rates from St. Louis to Bainbridge as unjust and unreasonable, the evidence relied upon to support that allegation is largely by way of comparison with other rates, especially with the rates to Eufaula and incidentally with the rates to Albany, Ga. The real question involved is the alleged unjust discrimination against Bainbridge and undue preference in favor of Eufaula, by reason of which complainant claims that the Eufaula rates are the only just and reasonable ones to apply to Bainbridge.

Complainant contends that the difference between the rates from St. Louis to Bainbridge and to Eufaula in favor of the latter unjustly permits Eufaula merchants to invade the territory that is naturally tributary to Bainbridge, to the disadvantage of the merchants in the latter place. But when the table of rates offered in evidence is examined it is found that the all-rail adjustment of rates at Eufaula does not permit of competition in Bainbridge territory to the disadvantage of Bainbridge merchants. One witness for complainant was of opinion that the through rates into Eufaula, plus the locals out, and the through rates into Bainbridge, plus the locals out, would equalize at or about Edison, Ga., which is a trifle nearer Eufaula than to Bainbridge. Another witness connected with the same concern said that Bainbridge could not compete with Eufaula at Arlington, which is approximately half way between the two points, but that at Damascus, a short distance south of Arlington, the combination would

be in favor of Bainbridge. From the record, it may be fairly assumed, so far as the all-rail adjustments are concerned, that the territory between Eufaula and Bainbridge is fairly and equitably divided, and permits no advantageous invasion by the one to the detriment of the other. Whatever distance may be in favor of Eufaula results naturally from the fact that the transportation from Bainbridge is in the nature of a back haul. Eufaula reaches this territory by paying a double local; that is, the local of the Central Railway of Georgia from Eufaula to Cuthbert and the local of the Georgia, Florida & Alabama from Cuthbert to Arlington. A reduction of 10 per cent from the sum of the two locals is permitted by the tariffs governing these shipments. It was stated by a witness for the Georgia, Florida & Alabama Railroad Company that his line would endeavor to have the Central of Georgia Railway Company refrain from making this 10 per cent reduction, so that the combination of locals out of Eufaula would not permit its dealers to go as far south as they can under the present rate adjustment, but up to the present time such change has not been made.

It is without dispute that Eufaula merchants can ship in from St. Louis and, by the use of the steamers on the Chattahoochee and Flint rivers, deliver goods into Bainbridge cheaper than the Bainbridge merchants can procure them all-rail. This, however, is due to the practice of the steamers in applying blanket package rates for any distance, and whatever discrimination against Bainbridge is caused thereby does not arise from the voluntary acts of the defendants in establishing what they deemed to be just and reasonable all-rail rates from St. Louis to Eufaula. The boat lines operating on the rivers are not operated in connection with or in any way controlled by the rail lines, and the rail carriers can not be held responsible for such advantages as Eufaula may enjoy by reason of the use of the river rates, unless it be held that whenever all-rail carriers establish rates to a given point they must take notice of the independent water rates from that point and of the territory that can be reached thereunder, and make such adjustment as will prevent the use of the water rates from that point to another point resulting in discrimination against that other point by reason of its all-rail rate adjustment—a rule that would have no support in law, in public policy, or in sound transportation principles.

The practice of the river steamers in applying package rates for any distance is not new in that territory or on other rivers in the south. It has been in effect on the Apalachicola, Chattahoochee, and Flint rivers for many years. And in this connection it may be well to note that with the possible exception of a wharfage charge at Eufaula,

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Bainbridge merchants can employ the all-rail rates into Eufaula and ship by steamer to Bainbridge and thus secure the same rates that the Eufaula merchants now enjoy.

It is not practicable to here set out all of the rates assailed. As before stated, the complaint alleges that all class and all commodity rates from St. Louis to Bainbridge are unjust and unreasonable as well as discriminatory. The testimony in regard to their unreasonableness was largely by way of comparison, and the evidence as to unjust discrimination related to articles usually handled by wholesale grocery houses, such as salt meats, canned goods, tobaccos, coffee, sugar, cereal foods, grain, flour and other grain products, light hardware, soap, glassware, etc. The differences between the commodity rates from St. Louis to Bainbridge and to Eufaula are not as great as in the various class rates, and for the purpose of this report it will be sufficient to use the class rates by way of illustration.

It was alleged in the answers that the rates in the complaint were not correctly stated, but at the hearing it was admitted that the rates assailed and stated in the complaint were correct at the time of the filing thereof, and that their incorrectness resulted from subsequent changes. Those changes increased some rates and reduced some. There were more increases than reductions. Changes were also made in the rates to Eufaula, and there it appears that the increases outnumbered the reductions in greater ratio than at Bainbridge. These changes did not affect the class rates to Eufaula, but to Bainbridge reduced fourth class 1 cent, fifth class 2 cents, and Class E 4 cents per 100 pounds. Other increases resulting from the general advance in rates into southeastern territory have also been made since the hearing. That question is at issue in another proceeding. This case involves mainly the relation of rates as between Bainbridge and Eufaula, and for those reasons we shall here confine ourselves to the questions of the relation of rates as between Eufaula and Bainbridge and the reasonableness of the Bainbridge rates as of date of this complaint.

The class rates from St. Louis to Bainbridge, Ga., and to Eufaula, Ala., in cents per 100 pounds were at the time of hearing as follows:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Bainbridge....	155	131	115	94	78	63	47	49	38	32	69	79	67
Eufaula.....	126	109	98	77	64	51	35	43	35	29	58	60	62

The scale from St. Louis to Montgomery is as follows, in cents per 100 pounds:

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate....	121	106	95	74	60	49	35	39	31	25	52	49	54

And from Montgomery to Bainbridge is as follows, in cents per 100 pounds:

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate....	71	61	53	49	43	37	28	26	20	17	39	43	33

The through rates from St. Louis to Bainbridge are less than the combination on Montgomery by the following:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Cents.....	37	36	33	29	25	23	16	13	10	22	13	20	

Bainbridge has the same class rates from eastern seaboard points and Pittsburg territory as Eufaula and Columbus, but this fact, in the absence of other proof, is not sufficient to force the establishment of the same class rates from the west to both Bainbridge and Eufaula.

It appears that Albany, Americus, Cordele, and Dawson, Ga., have lower class rates from St. Louis than Bainbridge. The class rates applying from St. Louis to Albany and other points in that group are as follows, in cents per 100 pounds:

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate....	146	126	113	90	75	60	44	47	38	32	68	70	68

Albany is about 80 miles northeast of Bainbridge on the Flint River, and whatever water transportation there may be from the Gulf to Albany must pass through Bainbridge. These rates to Albany from the west, however, are adjusted with respect to Atlanta and to Augusta and Macon. The rates to Augusta and Macon are made differentials higher than the rates to Atlanta, based on a distance of 90 miles used to Macon. Just south of that group is the Albany and Dawson group, which takes another set of differential rates higher than the rates to Macon. The basis for making rates from the west to Albany was established long before there was an all-rail route from St. Louis direct to Bainbridge. The Alabama Midland was built from Montgomery to Bainbridge in 1890, but, as has been stated, prior to September 10, 1894, rates from the west to Bainbridge were made on Montgomery, Ala., Albany, Ga., or Brunswick, Ga. Prior to the building of the Alabama Midland, the short line was through Albany, and the shipments ordinarily moved that way. This rail route was circuitous and all shipments from the west had to be brought into Bainbridge from the east. The lines reaching Albany made the rates from the west to that point, and as the Plant system, afterwards the Atlantic Coast Line, did not then reach that point from the west it had no voice in the making of the rates.

The building of the Alabama Midland from Montgomery to Bainbridge in 1890 made the first line over which traffic could be carried from St. Louis through Bainbridge to Albany. The shipments from

St. Louis via Albany had been carried from the latter point via the Savannah, Florida & Western Railroad, and when the Alabama Midland Railroad was completed that line, in carrying traffic from St. Louis to Albany through Bainbridge in connection with the Savannah, Florida & Western Railroad, was undoubtedly obliged to meet whatever rate was then in existence from St. Louis to Albany. The Savannah, Florida & Western Railroad as well as the Alabama Midland, is now a part of the Atlantic Coast Line, and whatever lower rates Albany may have than Bainbridge from the west were undoubtedly established by lines not reaching Bainbridge, and which the Atlantic Coast Line was afterwards obliged to meet. It is also claimed by defendants that the rates to Dawson, one of the points mentioned in the group with Albany, were fixed by the Interstate Commerce Commission.

It must be remembered that the Atlantic Coast Line Railroad Company does not reach Eufaula, and that the Central of Georgia Railway does not reach Bainbridge. The former has no voice in making the rates to Eufaula, and the latter has nothing to do with the establishment of the rates to Bainbridge. The Louisville & Nashville is a party to the rates from St. Louis to both Eufaula and Bainbridge, but that carrier alone can not fix the rates from St. Louis to either of those points.

Complainant lays stress on the fact that water competition at Eufaula was a potent factor in the establishment of the present rate adjustment there, and it urges that, therefore, the water competition at Bainbridge should be given consideration by the lines reaching Bainbridge. That contention results in this rather novel proposition: That water competition influenced the making of the rates to Eufaula; that those rates are lower than the rates to Bainbridge and result in unjust discrimination because of the water rates from Eufaula to Bainbridge; that the carriers reaching Bainbridge, although not the same as those at Eufaula, should make the same rates from St. Louis to Bainbridge that apply to Eufaula, because there is water competition at Bainbridge.

When unjust discrimination against one point and undue preference in favor of another are alleged, because of lower rates to the latter, and equality of rates is demanded as a cure for such unjust discrimination against the former, it must be shown that the circumstances and conditions at each of the said points are substantially similar, and that the lower rates at the one point were the result of the voluntary action of the carriers at that point. It appears to us that the circumstances and conditions obtaining at Eufaula and those surrounding Bainbridge are materially different. In the first place, the lines reaching Eufaula are not responsible for the rate adjustment at



Bainbridge, nor are the lines at Bainbridge responsible for the rate adjustment at Eufaula, and no line reaching either place is responsible in any degree for the water rates from Eufaula to Bainbridge, or from Bainbridge to Eufaula. It is true that the lines reaching Eufaula admit that the water competition at that point influenced the present rate adjustment, and the carriers at Bainbridge claim that in the adjustment at that point they have met whatever water competition there may be, and that such competition has not been sufficient to require the same scale of rates at Bainbridge that applies to Eufaula. The Atlantic Coast Line insists that its rates into Bainbridge have been sufficient to meet any water competition on the Flint River. There may be water competition at each of two points, and yet a difference in rate to those points may be justified. The carriers can not be compelled, as a matter of law, to meet water competition; they do it of their own volition, or whenever the same is potent enough to compel them to do so in order to secure the traffic. In each instance the carrier determines for itself whether such water competition has sufficient influence on the traffic to make it reduce its rates.

We can not find from the record that the rates to Bainbridge which were in effect at the time of the filing of this complaint are unjust or unreasonable in and of themselves, or that the discrimination resulting by reason of the all-rail adjustment at Eufaula and the use of the water rates out, as compared with the adjustment at Bainbridge, is unjust or undue, because it does not result from the voluntary act of the carriers at either point.

The complaint must therefore be dismissed, and such an order will be entered.

15 I. C. C. Rep.

No. 1660.  
CARL NOLLENBERGER  
v.  
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

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*Submitted December 29, 1908. Decided April 5, 1909.*

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This case is governed by *Baer Bros. Mercantile Co. v. M. P. Ry. Co. et al.*, 13 I. C. C. Rep., 329. Reparation awarded.

*William B. Harrison* for complainant.

*James C. Jeffery* for Missouri Pacific Railway Company.

*E. N. Clark* and *F. S. Titsworth* for Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

**CLARK, Commissioner:**

On various dates from June 27, 1906, to and including June 3, 1908, the Anheuser-Busch Brewing Association, of St. Louis, Mo., delivered at St. Louis, Mo., to the defendants, common carriers subject to the act to regulate commerce, for transportation to Leadville, Colo., 48 carloads of beer, consigned to complainant. On the shipments made between June 27, 1906, and November 27, 1907, a rate of 90 cents per 100 pounds was charged; and on the other shipments a rate of 92 cents per 100 pounds was charged. It is alleged that said shipments were transported on through bills of lading and that a charge per 100 pounds in excess of 70 cents was unjust and unreasonable. Reparation in the sum of \$1,500 is asked, and the fixing of a reasonable maximum rate for the future for the transportation of beer in carload lots between St. Louis and Leadville is prayed for.

Defendants deny that they did, on the dates shipments were made, or that they do now, operate under a common control, management, or arrangement for the continuous carriage of property from St. Louis, Mo., to Leadville, Colo., being subject to the act as to transportation from St. Louis to Pueblo, but not as to transportation from that point to Leadville; deny that the shipments were carried on through bills of lading; admit that they collected the rates of 90 and

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92 cents on the dates alleged, however, denying they were single charges on through shipments; deny that the rates charged were unjust and unreasonable; ask that as to shipments of June 27 and July 9, 1906, complaint be dismissed as barred by section 16 of the act, and assert that until complaint was filed the rates were not alleged to be in violation of the act.

At the hearing it was agreed that the local rate of defendant, the Missouri Pacific Railway, from St. Louis to Pueblo on beer in carload lots was just and reasonable.

The shipping tickets and expense bills for each shipment were put in evidence and they show that defendant, the Denver & Rio Grande Railroad, collected the total charges on each shipment. Complainant testified that he frequently protested to the agent of last-named defendant that the charges were unjust and unreasonable.

The primary and essential question is whether or not this proceeding is governed by the decision of the Commission in *Baer Bros. Mercantile Co. v. M. P. Ry. Co. and D. & R. G. R. Co.*, 13 I. C. C. Rep., 329, or is properly distinguishable therefrom.

Defendants contend that this proceeding is not in all respects like the *Baer Brothers case*. In that case formal protest was made; in this complainant admits no formal protest was made. But the Commission decided that it is not necessary that freight charges shall have been paid under protest in order to maintain a petition before the Commission for the recovery of excessive charges.

In *Baer Brothers case* it is stated:

It may well be said that shippers ought not to be permitted to pay these charges without objection during considerable periods of time, and afterwards claim damages on the ground that they were excessive. Such a case would present a question of good faith and of acquiescence which might be properly disposed of on that ground; but that is not at all the question presented here.

Defendants herein contend that this complainant did not act in good faith in acquiescing for a period of more than two years in the rates against which he now complains. This complainant did, however, protest orally to the agent of defendant, the Denver & Rio Grande Railroad, against the rates, and, as was said in the *Baer Brothers case*, "If it should be finally determined that a protest must be made at the time of payment of the freight money in each case, the result would be the grossest discrimination." We do not think the action of the complainant herein showed such acquiescence as would constitute bad faith.

Defendants further contend that the shipping receipts issued in this case to the Anheuser-Busch Brewing Association were not such as were issued to the Lemp Brewing Company in the *Baer Brothers case*, but were mere memoranda, and that complainant was fully

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aware of the custom of the defendants in conducting transportation from St. Louis to Pueblo, and from Pueblo to Leadville on local way-bills. Neither of these contentions is of weight in view of the results reached and the manner in which the actual transportation was conducted, and they are not sufficient to take this case outside of the principle laid down in the *Baer Brothers case*.

The property moved from St. Louis to Leadville in the same car; neither the shipper, consignee, or agent of either intervened at Pueblo; the shipments were accepted for transportation from St. Louis to Leadville and were delivered by the Missouri Pacific to the Denver & Rio Grande at Pueblo on transfer sheets issued by the Missouri Pacific and accepted by the Denver & Rio Grande; the Denver & Rio Grande advanced to the Missouri Pacific the full amount of its charges and collected same from consignee. These facts, together with other facts of record, constitute an arrangement which clearly brings the transportation within the scope of the act.

Generally speaking, the Denver & Rio Grande Railroad does not participate in joint rates to points on its lines, but it solicits such business for movement on combination rates, and traffic so moves with its acquiescence.

We hold that this case is governed by the *Baer Brothers case*, *supra*, and that the decision therein announced is controlling here; that the rate of 45 cents per 100 pounds on beer in carloads from Pueblo to Leadville, Colo., as applied on shipments from St. Louis, Mo., to Leadville, Colo., was unjust and unreasonable to the extent that it exceeded 30 cents per 100 pounds, and that complainant is entitled to reparation in the sum of 15 cents on each 100 pounds shipped.

The only question remaining to be considered is the amount of reparation due, and this involves two features—first, which, if any, of the shipments are barred from consideration by the Commission, and, second, whether the complainant is limited to the amount stated in the petition, \$1,500.

The charges on the first three shipments were paid on July 9 and 17 and August 10, 1906, respectively. A cause of action accrues on the date on which the freight charges are paid. The complaint in this case was filed July 25, 1908, and there is therefore no doubt that the first two shipments are barred. As to the third, defendants cite the decision in *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C. Rep., 199:

As to causes of action that accrued prior to August 28, 1906, the claim may be presented at any time prior to midnight of August 28, 1907, although such cause of action may have accrued more than two years prior thereto.

That is simply a holding that a claim in which the cause of action accrued prior to August 28, 1906, could lawfully be filed at any time

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prior to August 29, 1907, even though the cause of action had accrued more than two years prior to August 28, 1907. It did not decide that claims in which the cause of action accrued prior to August 28, 1906, were deprived of the two years' provision in the statute if they were not filed prior to August 29, 1907.

In *Kile & Morgan Co. v. Deepwater Ry. Co. et al.*, 15 I. C. C. Rep., 235, the Commission cited the *Nicola, Stone & Myers Co. case, supra*, and said:

Under the Commission's interpretation of the statute all claims, whether arising prior or subsequent to August 28, 1906, the effective date of the act, are entitled to two years for presentation to the Commission, the one-year proviso applying only to claims that accrued more than two years prior to that date. The petition in this proceeding having been filed with the Commission June 23, 1908, we think there exists no question of jurisdiction.

We find therefore that here only the two shipments upon which charges were paid July 9 and 17 are excluded.

It is conclusively shown that certain shipments actually moved between the points named and via the lines of these defendants; that the rates alleged to have been charged and collected were paid thereon; and in our view the actual damage sustained is a matter for determination by the Commission from the facts before it. In other words, the fact that complainant's petition asks damages in the sum of \$1,500 does not prejudice his right to recover on all the shipments, even though the aggregate amount of such recovery is greater than the sum claimed. The Commission is an administrative body created to effect substantial justice in the matters under its control, and is not bound or limited by the strict rules of pleading.

We find that upon complainant's shipments of beer herein involved, defendant Denver & Rio Grande Railroad collected excessive and unreasonable rates and charges to the extent of \$2,327.51, for which sum, with interest, an order of reparation will be entered against that defendant.

In this case, as in the *Baer Brothers case*, the fixing of a reasonable maximum rate for the transportation of beer from St. Louis to Leadville is prayed for. At a late stage of the proceedings in this case complainants sought to amend petition so as to include request for the establishment of a joint rate, which petition could not, at that time, be granted without complication and delay. For the same reasons announced in the *Baer Brothers case, supra*, we shall not undertake in this proceeding to fix the locals which will together make up the charge for future through movements, and as stated in that case—

If the Denver & Rio Grande does not reduce its charge in accordance with this report, or suitable through facilities are denied, the complainant can file its petition asking for the establishment of a joint through route and rate.

No. 1576.

ADVANCE THRESHER COMPANY

v.

ORANGE &amp; NORTHWESTERN RAILROAD COMPANY ET AL.

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Submitted March 8, 1909. Decided April 5, 1909.

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Rate of 59 cents per 100 pounds on agricultural machinery, in carloads, from Bancroft, Tex., to Crowley, La., found unreasonable and reparation awarded

*S. O. Bush* for complainant.

*E. B. Peirce* for Orange & Northwestern Railroad Company.

*J. P. Blair* and *F. C. Dillard* for Louisiana Western Railroad Company.

*Baker, Botts Parker,* and *Garwood* for Texas & New Orleans Railroad Company.

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant, a corporation engaged in the manufacture, shipment, and sale of threshing machines, shipped via lines of defendants, common carriers amenable to the act to regulate commerce, from itself at Bancroft, Tex., to itself at Crowley, La., 1 carload of agricultural machinery, the weight of which was 20,000 pounds, upon which a freight rate of 59 cents per 100 pounds, aggregating \$118, was charged. That rate is alleged to be unreasonable to the extent that it exceeded 37 cents per 100 pounds, the alleged combination of locals, and reparation in the sum of \$44 is demanded.

Defendants aver that the legal tariff rate was charged and deny that complainant is entitled to reparation. Case was set down for hearing September 16, 1908, and there was no appearance of the parties, but they have since submitted the case for hearing and determination on an agreed statement of facts.

The facts agreed upon show that the shipment consisted of agricultural machinery; that it moved from Bancroft, Tex., to Orange via the line of the Orange & Northwestern Railroad, from thence to Sabine River, Texas-Louisiana, via the Texas & New Orleans Railroad, and to Crowley via the Louisiana Western Railroad, on or about April 20, 1907; that the shipment was ratable as Class A in Western

Classification; that the through rate between the points of shipment was 59 cents per 100 pounds, and that the combination of locals on Beaumont, Tex., was at the time of the shipment 37 cents per 100 pounds.

The combination on Orange, the route via which the shipment moved, was at the time 32 cents per 100 pounds. Neither of these combinations can be verified from tariffs on file with this Commission. Both are made by using Texas state tariffs, which defendants have not filed with this Commission, to apply on interstate traffic. Supplement to Southwestern Tariff Committee's Tariff, I. C. C. No. 446, effective January 9, 1907, added Bancroft, Tex., to "points of destination" to which the rates shown in the tariff are applicable. Bancroft being added as a point of destination suggests some question as to the applicability of this rate eastbound from Bancroft, but the original tariff, showing the through class rates, provides that they shall be applicable "between" New Orleans and points taking same rates, and Texas points. Tariffs reading "between" are always understood to apply in either direction. Defendant, the Louisiana Western, averred in its answer that at the time the shipment moved there was no through rate in effect; that the lawful combination via Beaumont was 41 cents, and that the rate of 59 cents per 100 pounds was inadvertently and by error charged upon the shipment. This was an admission on its part that complainant was entitled to reparation in the difference between the combination rate and the rate charged, but it was in error as to lawful applicability of rates.

Effective August 1, 1907, Southwestern Tariff Committee's Tariff, I. C. C. No. 489, canceling its I. C. C. No. 446, provided Class A rate of 51 cents applicable "between" Bancroft and Crowley—that is, in either direction. Effective January 30, 1909, Southwestern Tariff Committee's Tariff, I. C. C. No. 562 provided Class A rate between Bancroft and Crowley, 35 cents per 100 pounds, applicable via the route over which this shipment moved.

It is seen, therefore, that the combination of locals which it is alleged would have been reasonable was not applicable via the junction point through which the shipment moved; that one of the factors of the combination applicable via the junction point through which the shipment moved was contained in a tariff not lawfully on file with this Commission; that a rate lower by 8 cents per 100 pounds was subsequently specifically made applicable to the shipment, and that that rate was subsequently reduced to 35 cents per 100 pounds.

As the Commission has indicated in previous decisions, it is not the proper course of procedure for complainants to file complaint and proceed no further. Some obligation rests upon complainant who seeks reparation to prosecute his case with due diligence. Generally speaking, where complainant does not appear at the hearing and his

absence is not explained the case should be dismissed on the ground that it is presumably abandoned. However, the parties have now submitted this case on an agreed statement of facts, and we will consider the question of the reasonableness of the rate charged.

Although one of the factors in the combination on Orange was not on file with this Commission, and hence was not lawfully applicable on interstate shipments, it was a combination of locals which could have been used if the transportation wholly within the state of Texas had been separated from the transportation from Orange, Tex., to Crowley, La. In other words, under the decision in *Gulf, Colorado & Santa Fe v. Texas*, 204 U. S., 403, the complainant could, by taking possession of his shipment at Orange, have reshipped it to Crowley, under a combination of rates aggregating 32 cents. The joint through rate charged exceeded that sum of the locals, and the Commission has held that it would be its policy to consider a through rate exceeding the combination of locals as *prima facie* unreasonable. However, in this case one of the locals is a compulsory intrastate rate and the other is a voluntary rate of the defendants. We will not rest our decision on this aspect of the case alone and do not now determine that a joint through rate exceeding the combination of a compulsory and a voluntary rate is necessarily unreasonable.

The rate lawfully applicable when this shipment moved has been reduced twice since then, and therefore the presumption is that it was too high. No proof having been offered on either side, the Commission must determine the case on the facts before it, and the presumptions.

The distance from Bancroft to Orange is 5 miles and from Orange to Crowley 91 miles. At the time this shipment moved defendants had a rate of 25 cents from Orange to Crowley. On its face 25 cents per 100 pounds for a distance of 91 miles strongly suggests the unreasonableness of 59 cents for 96 miles when the 91-mile haul is included within the 96-mile haul. It is fair to assume that when 91 miles of the 96 is covered by a 25-cent rate transportation for the remaining 5 miles is not under such dissimilar circumstances and conditions as to warrant the exaction of 34 cents more in charges. •

The record plainly shows, and we so find, that the rate of 59 cents per 100 pounds applied to this shipment from Bancroft, Tex., to Crowley, La., was and is unreasonable, and that a reasonable rate for the future for the transportation of the same commodity via the lines of the defendants over the same route between the same points should not exceed the subsequently established rate of 35 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$48, the difference between the aggregate amount collected and what would have been collected on the basis of the subsequently established rate of 35 cents, herein found to be reasonable.

An order in accordance with these views will be entered.

15 I. C. C. Rep.



No. 2066.

**FARLEY & LOETSCHER MANUFACTURING COMPANY**  
*v.*  
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY.**

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*Submitted April 6, 1908. Decided March 8, 1909.*

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Rate of 19 cents per 100 pounds on doors, in carloads, from Dubuque, Iowa, to Sioux Falls, S. Dak., found unreasonable. Reparation awarded.

*C. Loetscher* for complainant.

*William Ellis* for defendant.

**REPORT OF THE COMMISSION.**

**CLARK, Commissioner:**

During the months of October and November, 1906, complainant shipped via the line of the defendant, a common carrier amenable to the provisions of the act to regulate commerce, from Dubuque, Iowa, to Sioux Falls, S. Dak., 7 carloads of doors, aggregating 289,300 pounds, upon which a rate of 19 cents per 100 pounds was exacted. Under date of November 19, 1907, complainant wrote to the Commission setting forth the fact of the shipments; stating that the rate in effect at the same time via the Illinois Central, a competing line, for the transportation of the same commodity between the same points was 10 cents; that the defendant, since the movement of the shipments, had reduced its rate to 10 cents per 100 pounds; and requesting that the Commission grant authority for the defendant to make refund informally. Defendant declined to admit the unreasonableness of the rate charged. Thereupon formal petition was filed, answering which, defendant admitted the rate charged to have been unreasonable and excessive, averring that it was the only rate properly chargeable at the time the shipments moved, and showing that it had been subsequently reduced. The right or power of the Commission to grant reparation to the complainant was denied.

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In *Morse Produce Co. v. Chicago, Milwaukee & St. Paul Ry. Co.*, 15 I. C. C. Rep., 334, the contention that the Commission had not the right or power to award reparation was considered and decided adversely to the defendant.

By stipulation entered into between complainant and defendant this case is submitted on the pleadings; the filing of briefs and presentation of argument being waived. Effective January 4, 1907, defendant established a rate of 10 cents per 100 pounds on doors in carload lots from Dubuque, Iowa, to Sioux Falls, S. Dak., and that rate is still in effect.

On the pleadings the Commission finds that the rate of 19 cents per 100 pounds applied to these shipments was unjust and unreasonable to the extent that it exceeded the subsequently established rate of 10 cents per 100 pounds, and that the complainant is entitled to reparation measured by the difference between the charges on the 7 carloads of doors at the rate of 19 cents per 100 pounds, charged, and the rate of 10 cents per 100 pounds, herein found to be reasonable, or \$260.37, with interest at 6 per cent per annum from January 1, 1907.

An order will be entered accordingly.

15 I. C. C. Rep.

No. 1760.

SOUTHERN KANSAS MILLERS COMMERCIAL CLUB

v.

ATCHISON, TOPEKA &amp; SANTA FE RAILWAY COMPANY.

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*Submitted March 17, 1909. Decided April 5, 1909.*

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Complaint assailed defendant's rates on wheat from points in Oklahoma to Kansas City, Mo., as unreasonable and unjustly discriminatory; but on complainant's motion and the facts appearing in the record, the complaint is dismissed.

*A. E. Helm* for complainant.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*J. H. Johnston* for Oklahoma Millers Association, intervener.

#### REPORT OF THE COMMISSION.

*COCKRELL, Commissioner:*

The complaint in this case assails defendant's rates on wheat from points in Oklahoma to Kansas City, Mo., as unjust and unreasonable, and as unjustly discriminatory to complainant and its members, when compared with defendant's rates from various stations in Kansas to Kansas City. The Oklahoma Millers Association intervened, claiming that any change in the rates from Oklahoma to Kansas City without similar changes in rates from other points to Oklahoma points would disturb the present rate adjustment to their disadvantage. The case being at issue was assigned for hearing at Wichita, Kans., on March 17, 1909. On that date complainant filed motion to dismiss, stating that the complaint had been filed for the purpose of readjusting the wheat rates of the defendant from points on its Pan Handle line in western Oklahoma to Kansas City to enable the millers of Kansas to purchase wheat in that territory.

It was further stated that a readjustment of intrastate rates by the legislature of Kansas and the granting of certain transit privileges to complainant by defendant, which opened up territory outside that complained of, had given complainant the necessary relief, and that after further investigation of all facts involved in the proposed readjustment prayed for in the complaint, the complainant and its members concluded that the rates complained of were not prejudicial to their interests and a further prosecution of the case was not desired. Upon the facts stated the complaint is dismissed, and an order will be so entered.

No. 1761.

SOUTHERN KANSAS MILLERS COMMERCIAL CLUB

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY  
ET AL.

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*Submitted March 17, 1909. Decided April 5, 1909.*

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Complaint alleged that defendants' rates on grain and grain products from points in Kansas to Memphis, Tenn., and Little Rock, Ark., are unreasonable and unjustly discriminatory; but on complainant's motion and the facts appearing in the record, the complaint is dismissed.

*A. E. Helm* for complainant.

*E. B. Peirce* for Chicago, Rock Island & Pacific Railway Company and St. Louis & San Francisco Railroad Company.

*J. H. Johnston* for Oklahoma Millers Association, intervener.

#### REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

Complainant association, representing the milling interests of southern Kansas, assails as unjust and unreasonable defendants' rates on grain and grain products from points in Kansas to Memphis, Tenn., and Little Rock, Ark., and as unjustly discriminatory against the millers and purchasers of grain in Kansas, when compared with defendants' rates from Oklahoma points to the same destinations. The Oklahoma Millers Association intervened, denying complainant's right to relief, and alleged that Oklahoma is entitled to a lower rate to Arkansas points than is Kansas.

The case being at issue was assigned for hearing at Wichita, Kans., on March 17, 1909. On that date complainant filed application to dismiss, stating that it was the belief of complainant and its members at the time of the filing of the complaint that the lower rates on grain and grain products from Oklahoma points to Memphis and Little Rock would seriously interfere with the marketing of their products in the state of Oklahoma and in the southeast; but that after several

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months' experience and operation under said rates complainant and its members have found that the injury anticipated did not develop; that after further investigation of all the facts involved in the readjustment of rates prayed for in the complaint, complainant and its members have concluded that the rates involved therein are not prejudicial to their interests, and there was no desire to further prosecute the case. Upon the facts stated the complaint is dismissed, and an order will be so entered.

15 I. C. C. Rep.

No. 1762.

SOUTHERN KANSAS MILLERS COMMERCIAL CLUB

*v.*

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted March 17, 1909. Decided April 5, 1909.*

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Complaint charges that defendants' rates on grain and grain products from points in Kansas to various points in Oklahoma are unjust and unduly discriminatory against the milling interests of southern Kansas; but on complainant's motion and the facts appearing in the record, the complaint is dismissed.

*A. E. Helm* for complainant.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company.

*E. B. Peirce* for Chicago, Rock Island & Gulf Railway Company; Chicago, Rock Island & Pacific Railway Company; and St. Louis & San Francisco Railroad Company.

*James C. Jeffery* for Missouri Pacific Railway Company, and St. Louis, Iron Mountain & Southern Railway Company.

*J. H. Johnston* for Oklahoma Millers Association, intervener.

#### REPORT OF THE COMMISSION.

**COCKRELL, Commissioner:**

Complainant association, representing the milling interests of southern Kansas, complains of unjust discrimination against the millers in that territory on shipments of grain and grain products from points in Kansas to various points in Oklahoma by reason of defendants' intrastate rates on grain and grain products, but especially on corn and wheat between points wholly within the state of Oklahoma. The Oklahoma Millers Association intervened and alleged that the granting of complainant's prayer would subject said association to unjust discrimination if the rates from Oklahoma to Kansas points were not to be reduced under the prayer of the complaint.

The case being at issue was assigned for hearing at Wichita, Kans., on March 17, 1909. On that date complainant filed application to  
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dismiss, stating that it was the belief of complainant and its members at the time of the filing of the complaint that the low intrastate rates on grain and grain products between points in Oklahoma would seriously interfere with the marketing of the Kansas products in Oklahoma, but that after several months' experience and operation under said rates complainant and its members have found that the injury anticipated did not develop. It was further stated that the legislature of Kansas had recently established a schedule of intrastate rates in Kansas that will be sufficient to give complainant the relief asked for in the complaint and that complainant and its members after further investigation had concluded that the rates involved in the complaint are not prejudicial to their interests and there was no desire to further prosecute the case. Upon the facts stated the complaint is dismissed, and an order will be so entered.

15 I. C. C. Rep.

No. 2080.  
A. T. MAXWELL  
v.  
ADAMS EXPRESS COMPANY.

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*Decided April 5, 1909.*

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Complaint involved reasonableness of rule of defendant express company which assesses double rates upon typewriters where the same are not properly boxed; but as complainant failed to appear at the hearing, either in person or by attorney, complaint is dismissed for want of prosecution.

No appearance for complainant.  
*T. B. Harrison, jr.*, for defendant.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complaint in this case brings in question the propriety of a rule of the defendant which assesses double rates upon typewriters where the same are not properly boxed. The specific allegations of the complaint set forth that in September, 1908, complainant delivered to the defendant at Richmond, Va., a typewriter, weighing 23 pounds, consigned to himself at Cleveland, Ohio; that the defendant exacted the double merchandise rate, or \$2, notwithstanding the unconditional release signed by complainant for all damage in transit; and that by reason of the facts set forth the rate charged was unjust, unreasonable, and in violation of the act. Reparation in the sum of \$1 was asked.

The defendant answered the complaint and defended the justice and reasonableness of the charge assessed on this particular shipment.

The case being at issue was set for hearing at Cleveland, Ohio, March 27, 1909, at which time and place the defendant was represented by counsel, but the complainant did not appear. Whereupon the attorney for the defendant moved that the complaint be dismissed for want of prosecution; and thereafter defended the rule and rate attacked in the complainant's petition on the ground of the extra labor and expense in handling the typewriter by reason of the negligence of the complainant in not properly boxing the shipment.

Upon consideration of this case the complaint must be dismissed.



No. 1722.  
**MIDLAND MILL & ELEVATOR COMPANY**  
*v.*  
**KANSAS SOUTHWESTERN RAILWAY COMPANY ET AL.**

*Submitted December 12, 1908. Decided April 5, 1909.*

Complainant asks for reestablishment of joint or through rates on grain and grain products from all points on the line of the Kansas Southwestern Railway to all points on the lines of the other defendants; *Held*, That upon the facts in this case the complainant is not entitled to the relief prayed. Complaint dismissed.

*Chris M. Bradley* for complainant.

*J. E. Torrance* for Kansas Southwestern Railway Company.

*Edgar A. de Meules* for Midland Valley Railroad Company.

*S. W. Moore* and *Fred H. Wood* for Kansas City Southern Railway Company.

*James Hagerman* and *Joseph M. Bryson* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

REPORT OF THE COMMISSION.

*COCKRELL, Commissioner:*

The complainant, located at Muskogee, Okla., states that the defendants, prior to the summer and fall of 1907, had in effect joint or through rates on grain and grain products from all points on the line of the defendant, the Kansas Southwestern Railway Company, to all points on the lines of the Midland Valley Railroad Company, the Kansas City Southern Railway Company, the Missouri, Kansas & Texas Railway Company, the Missouri, Kansas & Texas Railway Company of Texas and their connections; that thereafter, in the fall of 1907, said defendants did cancel all of such joint or through rates and have ever since refused to put into effect joint or through rates between the points referred to; that no reasonable or satisfactory through rates exist from points on the Kansas Southwestern to the plant of the complainant, and that by reason of the action of the

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defendants before stated the complainant has been subjected to the payment of unjust and unreasonable rates of transfer on grain and grain products, in violation of the act to regulate commerce, and has been discriminated against in favor of millers located at Arkansas City and other points in Kansas. Complainant prays that defendants be required to publish and maintain proper and reasonable joint or through rates on grain and grain products in such manner and for such time as the Commission may designate.

The defendants, the Kansas City Southern and the Midland Valley, admit the statements in the complaint and state that they desire that through rates be established, but claim that the Kansas Southwestern refuses to join in doing so.

The defendants, the Missouri, Kansas & Texas and the Missouri, Kansas & Texas of Texas, admit that the joint or through rates referred to were in effect, but state that they were canceled at the request of the Kansas Southwestern upon advice from said road that it no longer desired to participate in this traffic when routed in connection with the Midland Valley.

The defendant, the Kansas Southwestern, admits the cancellation of through rates to points on the Kansas City Southern Railway, the Missouri, Kansas & Texas, and the Missouri, Kansas & Texas of Texas when via the Midland Valley, but denies that it has canceled through rates from its stations to points on the Midland Valley, claiming that it has through rates from points on its line to points on the Midland Valley and that complainant can now make shipments from points on its line in connection with the Midland Valley to complainant's plant at Muskogee; that in connection with other carriers than the Midland Valley it is in position to transport grain and grain products originating on its line to points on the Kansas City Southern, the Missouri, Kansas & Texas, and the Missouri, Kansas & Texas of Texas via routes which will render the traffic more profitable to it than when such grain is transported in connection with the Midland Valley, and that it is its purpose to arrange for such through rates to points on the Kansas City Southern, Missouri, Kansas & Texas, and Missouri, Kansas & Texas of Texas as will inure to its benefit and at the same time will in no way interfere with the ability of shippers located on the lines of the three last-named roads to secure and handle, on basis of through rates, the grain and grain products produced on its lines; that through rates from points on its line in connection with the Midland Valley to complainant's mill at Muskogee are in force and that the maintenance of through rates to points beyond the Midland Valley to points on the Kansas City Southern, Missouri, Kansas & Texas, and Missouri, Kansas & Texas of Texas is

not desirable or necessary when through rates are arranged via routes other than the Midland Valley to points on such defendants' lines.

The facts in this case are as follows:

There is no complaint that any existing rates on the products in question are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation of the act. The complainant, whose mill and elevator are located on the tracks of the Midland Valley at Muskogee, Okla., is engaged in grinding corn into meal and handling grain for shelling, cleaning, clipping, and shipping. It does not mill wheat. The Midland Valley extends from Arkansas City, Kans., through Fort Smith, Ark., to a point in Arkansas about 40 miles southeast thereof. It crosses the Missouri, Kansas & Texas at Muskogee and two other points, the Frisco at Muskogee and two other points, the Kansas City Southern at Panama; and through Arkansas City, its northwest terminus, the Frisco and the Santa Fe pass, going north and south. The defendant, the Kansas Southwestern, extends from its eastern terminus at Arkansas City, Kans., westerly to Anthony, Kans., not quite 60 miles. It connects with the Santa Fe at each end and crosses it at two points between, and has four outlets by the Santa Fe and one by the Frisco, north and south. It is owned by those two systems and extends wholly within the state of Kansas. Its earnings do not pay its operating expenses, the deficit being paid by the two owning roads, and in all tariffs heretofore established it has been allowed its full local rates as its proportion of all through and joint rates. Along its line are 32 mills and elevators, and during the fiscal year 1908 it handled 103 carloads of corn and 451 carloads of wheat. According to the Railroad Equipment Guide, it has 1 locomotive and 7 cars.

The Midland Valley tariff No. 41-E, I. C. C. No. 196, effective November 16, 1907, and now in force, in connection with the Kansas Southwestern Company and the Missouri, Oklahoma & Gulf Railway Company, establishes rates on grain and grain products between all points on the Kansas Southwestern and all points on the Midland Valley to Fort Smith, Ark. Southwestern lines tariff No. 47, I. C. C. No. 534, effective September 15, 1908, and now in force, contains local and proportional rate on grain and grain products from all points of issuing carriers (the Santa Fe, the Rock Island, the Kansas City Southern, the Missouri, Kansas & Texas, the Missouri Pacific, the Frisco and others) to Louisiana points, and from all points on the Kansas Southwestern to Louisiana points. This tariff is also participated in by the Kansas Southwestern, the Midland Valley, the Missouri, Kansas & Texas of Texas, the Missouri, Oklahoma & Gulf, and practically all southwest roads. Leland's Southwestern Lines tariff No. 32-H, I. C. C. No. 551, effective December 5, 1908, with the Kansas City Southern, the Midland Valley, the Missouri, Kansas &

Texas, the Santa Fe, Rock Island, Frisco, the Missouri Pacific Lines and many others, as issuing lines, and also the Kansas Southwestern and nearly all southwest lines as participating carriers, contains local and proportional rates on grain and grain products from points in Arkansas, Colorado, Kansas, Louisiana, Missouri, Nebraska and other states to points in Texas, including all points on the Kansas Southwestern. These tariffs corroborate the statements in the answer of the Kansas Southwestern to the complaint.

The manager of the complainant, at the hearing of the complaint, was asked the following:

Relative to the milling in transit, tell me just what through rate you want established.

He replied:

We are not particular as to what rate, but would prefer to have these rates established via the Midland Valley, inasmuch as our plant is on the Midland Valley tracks.

and his attorney replied:

Now the tariff; we can not name that except by way of restoration of the tariff formerly in force. It would be a competitive rate left open for the adjustment of the carriers, and if they fail to adjust, the Commission can prescribe.

He was then asked by his attorney:

Is there any through route or joint rate, Mr. Wolaver, in force covering grain and grain products from points on the Kansas Southwestern permitting you milling-in-transit privileges over the M., K. & T. and the Kansas City Southern to your trade territory in Texas, Louisiana, and Arkansas?

to which he replied:

There is not at the present time.

In response to an inquiry as to competitors, he said:

Business in Texas we are in competition with the Arkansas City mills, with the mills of the Santa Fe road at Oklahoma City, and at Perry, in Louisiana, we come in competition with the Oklahoma mills and we come in competition with T. H. Bunch at Little Rock and also with the Coffeyville mills.

The attorney then asked:

If the Commission gives you the relief asked for in your petition will you buy grain originating at points on the Kansas Southwestern for milling in transit here and ship it out in your trade territory in the south and southwest?

He replied:

That is our intention; yes, sir.

The general freight and passenger agent of the defendant, the Midland Valley, stated in his examination as follows:

I believe that on all of our tariffs the tariffs to Midland Valley local stations, the tariffs to Kansas City Southern local stations, and to the Kansas City Southern connections we allowed the Kansas Southwestern its full local rate from points of origin to Arkansas City.

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He was asked by the examiner:

When a line is allowed its full local, why is it necessary to make a through rate?

He replied:

From Kansas Southwestern points, with the exception possibly of a few stations on its west end, the rate is the same from all of its stations as it is from Arkansas City, and in making the through rate, to the best of my knowledge and belief, the rate from Arkansas City to Texarkana or Dallas or Fort Worth is the same as it is from Anthony.

In response to further inquiry by the examiner as to the necessity for a through joint rate when the originating carrier is allowed its full local rate, he said:

In order that the stuff may move on a through tariff from points of origin to final destination and not be higher than the sum of the two locals to the junction point; in other words, if the rate from Arkansas City to Dallas is 23 cents and the rate from Anthony is 23 cents, if we move it into Arkansas City at 6, 7, or 8 cents and then out at 23 cents the rate is entirely out of line.

In further colloquy the examiner asked:

What would be the advantage of a through rate if you allow the initial carrier a full local? All you have to do is to make each rate from junction point and add the rate to it.

He replied:

That would disturb all other rates to the junction point.

The manager of the Muskogee Traffic Bureau, who was a witness, also answered:

The rates from Arkansas City would have to be used and the rate would apply then in this way: The shipment would have to move as a local shipment from Caldwell or any other point to Arkansas City and be reshipped under the rate applying from Arkansas City to ultimate destination, which combination would produce a rate so high that no miller or other grain dealer could compete with the millers in such through rates, which are practically the Arkansas City rates.

These quotations throw light on the real purpose contemplated in these proceedings. The roads—the Midland Valley, the Missouri, Kansas & Texas, the Frisco, and the Missouri, Oklahoma & Gulf—which pass through Muskogee, can establish such regulations for milling in transit and for transfers from track to track as they desire without any order from this Commission. The complainant does not indicate any particular points on the lines of the defendants, or any one of them, to which it wants through routes and joint rates. The Midland Valley and the Kansas City Southern, in their answers, admit that joint rates ought to be put into effect and claim the Kansas Southwestern refuses to join in doing so.

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The Kansas Southwestern has been ever since November 16, 1907, a party to the Midland Valley tariff No. 41-E, I. C. C. No. 196, which establishes rates from all points on its line to all points on the Midland Valley to Fort Smith, including Panama, where the Kansas City Southern crosses it, and these two last-named companies can establish in connection therewith such joint or proportional rates as they desire, allowing to the Kansas company its full local rates, and they can allow milling in transit. There are through routes and joint or proportional rates from all points on the Kansas Southwestern line to Texas and Louisiana points over sundry lines, as shown by the tariffs referred to. No producer or shipper on the Kansas Southwestern, and no consumer or purchaser in Arkansas, Louisiana, or Texas, is making any complaint against present rates, charges, or regulations.

The conclusion of the Commission is that upon the facts in this case the complainant is not entitled to the relief prayed, and its complaint must be dismissed.

15 I. C. C. Rep.

No. 1982.  
ISBELL-BROWN COMPANY  
v.  
MICHIGAN CENTRAL RAILROAD COMPANY ET AL

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*Decided April 5, 1909.*

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Complaint alleged that defendants collected for the transportation of 1 carload of beans from Lansing, Mich., to Cedar Rapids, Iowa, a rate of 30½ cents per 100 pounds; one of the defendants admitted that the legally published rate at the time of the shipment was 28½ cents per 100 pounds and agreed to refund the excess collected. This can be done without any order of this Commission. No evidence being presented as to the unreasonableness of the rate, the complaint is dismissed.

No appearance for complainant.

*S. A. Lynde* for Chicago & Northwestern Railway Company.

*G. E. Tegar* for Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

*COCKRELL, Commissioner:*

Complainant charges that on November 6, 1907, it shipped from Lansing, Mich., to Cedar Rapids, Iowa, a carload of beans over the lines of the defendants and prepaid a freight charge of 28½ cents per 100 pounds; that on arrival at Cedar Rapids an additional charge of \$9.60 was exacted, making the total rate collected 30½ cents per 100 pounds, which rate complainant alleges was unjust and unreasonable, as Cedar Rapids, Iowa, is intermediate between Lansing and St. Paul, Minn., and up to September, 1907, beans, carload, to Cedar Rapids took the same rate as St. Paul, 28½ cents. Complainant prayed for reparation and for the reestablishment at Cedar Rapids, Iowa, of the St. Paul basis.

The Chicago & Northwestern answered, admitting the shipment and denying that the charges assessed were unjust or unreasonable. The case was heard at Detroit, Mich., after due notice to all parties.

The complainant made no appearance, and the Michigan Central, which had not filed an answer, appeared and admitted that the legally published rate at the time the shipment moved was 28½ cents

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per 100 pounds and that reparation in the amount of such overcharge would be made. This can be done without any order of this Commission. The defendant denied that Cedar Rapids was intermediate between Lansing and St. Paul. The record shows that St. Paul is not on any reasonable line of the defendants running through Cedar Rapids and that it is 464 miles from Lansing to Cedar Rapids, while to St. Paul it is 654 miles.

No evidence being presented of the charge in regard to the alleged unreasonableness of the rate and the complainant not appearing, the complaint is dismissed.

15 I. C. C. Rep.



No. 2076.

## AMERICAN CIGAR COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted April 6, 1908. Decided April 5, 1909.*

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Complainant shipped from Stoughton, Wis., to Passaic, N. J., over defendants' lines one carload of leaf tobacco, for which it was charged a rate of 52½ cents per 100 pounds, of which the initial carrier received 17½ cents and the delivering carrier 35 cents per 100 pounds. At the time of shipment the 17½-cent rate was the legally published rate over the initial line for interstate commerce, whereas at the same time it had a rate of 15 cents per 100 pounds for local shipments. Subsequently the interstate rate was reduced to the local rate. The 17½-cent rate found unreasonable, and reparation awarded.

*Junius Parker* for complainant.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

*H. A. Taylor* for Erie Railroad Company.

## REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The complainant filed its petition January 22, 1909, against the Chicago, Milwaukee & St. Paul Railway Company, which duly answered the petition. The complainant and the said defendant then filed a written stipulation agreeing that the case may be determined upon the pleadings and without hearing, the filing of briefs and presentation of arguments being waived by each party.

It appears that the shipment moved from Stoughton, Wis., to Passaic, N. J., and necessarily had to pass over the lines of common carriers not parties. The Commission thereupon had the Erie Railroad Company and the Chicago & Erie Railroad Company made defendants therein and required them to answer. The Erie Company duly answered. The Commission, from the pleadings and the records of the Commission, finds the facts to be as follows:

The complainant, July 31, 1907, shipped from Stoughton, Wis., to Passaic, N. J., over the lines of the defendants, the Chicago, Milwaukee & St. Paul Railway Company and the Erie Railroad Company,

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one carload of leaf tobacco, weighing 22,100 pounds, and paid at the rate of 52½ cents per 100 pounds, amounting to \$116.03, of which the Chicago, Milwaukee & St. Paul received 17½ cents and the Erie Company 35 cents per 100 pounds. That at the time the shipment moved the 17½-cent rate was the legally published rate over the line of the Chicago, Milwaukee & St. Paul Railway Company for interstate commerce, and the Chicago, Milwaukee & St. Paul Railway Company also had a local tariff of 15 cents per 100 pounds, not then applicable to interstate shipments. This local tariff was subsequently, by supplement No. 2, dated August 24, 1907, filed with the Commission and given an I. C. C. number, namely, B-421, effective September 24, 1907, making said rate of 15 cents effective on interstate traffic.

The opinion of the Commission is that the said rate of 17½ cents so charged by the Chicago, Milwaukee & St. Paul Railway Company was unjust and unreasonable and should not have exceeded 15 cents per 100 pounds, and that 15 cents per 100 pounds on such shipment was, and is, a just and reasonable rate to be observed hereafter as the maximum to be charged.

Our conclusions are that complainant is entitled to reparation in the sum of \$5.53 and an order will be issued accordingly.

15 I. C. C. Rep.

No. 1650.

STANDARD LIME &amp; STONE COMPANY ET AL.

v.

CUMBERLAND VALLEY RAILROAD COMPANY ET AL.

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*Submitted February 9, 1909. Decided April 6, 1909.*

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1. It is the duty of a common carrier to receive and carry, upon reasonable terms, all goods tendered in suitable condition, and it can not lawfully discriminate in favor of any person, product, or locality.
2. A common carrier, in order to build up and foster industries on its own lines, can not lawfully refuse to carry the products of like industries located on connecting lines. Decision of the Commission in 12 I. C. C. Rep., 183, and 13 I. C. C. Rep., 460, adhered to.

*John B. Daish and Frank J. Hogan for complainants.**Sharper & Elder for defendants.*

## REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

The facts in this case are that the Standard Lime & Stone Company has stone quarries at Martinsburg, W. Va., and the Washington Building Lime Company has such quarries at Bakerton and Ingle, W. Va., a short distance east of Martinsburg, on the line of the Baltimore & Ohio Railroad, hereafter called the B. & O., which quarries have been in operation for years past. Daniel Baker is the president of both complainants. J. E. Baker is the proprietor of stone quarries at Bunker Hill, W. Va., located on the lines of the defendant, the Cumberland Valley Railroad, hereafter called the C. V., about 10 miles south of Martinsburg, the point where the C. V. running from Winchester to Harrisburg, Pa., crosses the B. & O., and began shipping stone products in May, 1907. Limestone and lime are the products in controversy. The competition between these two industries has been attended with feelings of strong rivalry.

C. V.'s tariff I. C. C. No. 1467 established sixth class rates on lime and limestone from Bunker Hill and Martinsburg to Philadelphia, 13 cents per 100 pounds from Bunker Hill and 12 cents per 100

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pounds from Martinsburg, and as amended by supplements, is now in force. C. V.'s joint freight tariff I. C. C. No. 1473, in connection with the Pennsylvania system, established commodity rate on building and chemical lime, carloads, from Bunker Hill and Martinsburg to Philadelphia, at \$1.25 per ton. This tariff was issued August 21, effective August 25, 1906, and was canceled by C. V.'s joint tariff, I. C. C. No. 1534, effective January 15, 1907, which named, in connection with the defendants, the New York, Susquehanna & Western Railroad, hereafter called N. Y., S. & W., the Pennsylvania Railroad, hereafter called the Pa. R. R., the Cornwall & Lebanon Railroad, hereafter called the C. & L., and the New York, Philadelphia & Norfolk, hereafter called the N. Y., P. & N., rates from Bunker Hill, but not from Martinsburg, to sundry points in New Jersey, New York, Pennsylvania, and West Virginia on lime and ground limestone, carloads. This, in turn, was canceled by the issue of C. V.'s I. C. C. No. 1550, corrected, effective May 18, 1907, establishing rates on lime and limestone, carloads, from Bunker Hill, Martinsburg, and shipments received from B. & O. at Martinsburg to sundry points in New Jersey, New York, Pennsylvania, Maryland, and Virginia. On April 22, 1907, the C. V. issued its supplement No. 1 to said tariff, effective June 19, 1907, continuing the application of the rates on limestone and lime from Bunker Hill, but canceling such rates from Martinsburg except on land lime only when received from the B. & O.

The complainants applied to the defendant, the C. V., to give them the same rates on lime and limestone products from Martinsburg that were given on the same products at Bunker Hill, but their request was refused. Defendants justify such refusal by the C. V., and claim that the C. V. issued said supplement No. 1 for the express purpose of establishing, maintaining, and fostering an industry at Bunker Hill similar to that at Martinsburg, and that the rates from Bunker Hill were made to meet the rates in effect from Martinsburg, Bakerton, and Ingle, competing producing points, to competing consuming points via the B. & O., a competing line, and its connections, and that the points of destination named in the complaint are for all practical purposes reached by the competing line, B. & O., under through routes and joint rates by other carriers than these defendants, and that by reason of the existence of such routes and rates from Martinsburg to such destinations, the defendants should not be compelled to establish such routes and rates on their lines. The C. V. refuses to receive lime and limestone products from the complainants at Martinsburg at the same rates and on the same terms as such products are received at Bunker Hill, and refuses to accept from the B. & O. at Martinsburg B. & O. cars loaded with complainants' products and placed on the tracks of the C. V. at Martinsburg.

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Does the law permit or justify the defendants to so act? The common law is explicit in condemning such action on the part of a common carrier.

In Moore on Carriers, page 92 it is said:

It is the duty of a carrier on being tendered a reasonable compensation to receive and carry all goods offered to it for transportation within the line of its business.

*Id.*, p. 93:

A corporation which undertakes to operate a railroad franchise assumes all the duties which spring by law from the character of its business and from customs incident to it, and it tenders a continuing offer to the general public that it will perform those duties for the benefit of each of them when demanded, which obligation is an enforceable contract. A common carrier can not legally refuse to carry the goods of any person or to accept them for carriage except for just cause, nor can it lawfully discriminate in favor of any person as to facilities or price for transportation.

*Id.*, p. 95:

Must haul cars and freight of other carriers. Railroad companies invested with important powers and franchises by the state become to a certain extent public agents, and in the exercise of their calling they are held to a strict performance of the public duties enjoined upon them as a consideration for the rights and powers thus granted. They are thus bound to transport or haul upon their roads the cars and freight of any other railroad company when requested so to do, and hold the same relation as a common carrier to such cars and freight that they do to ordinary freight received by them for transportation; and in case of loss are held to the same measure and character of liability as would attach in respect to any other property.

*Id.*, p. 96:

A railroad corporation is compellable by mandamus to exercise its duty as a common carrier of freight and passengers.

A mandatory injunction will issue to compel a railroad company to perform its duty to the public of hauling the cars of another company.

Hutchinson on Carriers, 3d edition, volume 1, section 143:

It has been already stated in giving the definition of a common carrier that the obligation to accept the goods when they are tendered to him for carriage is an essential element of his character, and that if there be no such obligation he is not a common carrier although he may carry for hire.

*Id.* sec. 149:

If the carrier refuses without lawful reason to accept and carry the goods, the owner may maintain an action against the carrier for the damages sustained by such wrongful refusal.

*Id.*, vol. 2, sec. 511:

Being provided with the facilities for the transportation of goods of the character which he proposes to carry and to which his means of conveyance are adapted, the carrier is under a legal obligation to receive all such goods as may be offered to him for carriage, except for some legal reason.

Id., sec. 512:

But if he refuse without some legal reason for so doing to accept for carriage the goods, being such as he is accustomed to carry, of any person who is ready and willing to pay him his price for the carriage, he becomes liable to an action for damages for so doing. And not only is he obliged to receive and carry such goods, but he is required to carry for all his employers alike. He can show no favors, nor make distinctions which will give one employer an advantage over another, either in the time or order of shipment, or in the distance of the carriage, or in the conveniences or accommodations which may be afforded. "Common carriers are bound to carry indifferently, within the usual range of their business, for a reasonable consideration, all freight offered and all passengers who apply. For similar equal services they are entitled to the same compensation."

6 Howard, 382: In the case of the *New Jersey Steam Navigation Company v. Merchants Bank*, referring to the navigation company as a common carrier, the Supreme Court said:

He is in the exercise of a sort of public office and has public duties to perform from which he should not be permitted to exonerate himself without the assent of the parties concerned, and this is not to be implied or inferred from a general notice to the public limiting his obligation which might or might not be assented to. He is bound to receive and carry all the goods offered for transportation subject to all the responsibility incident to his employment and is liable to an action in case of refusal.

12 Wall., 270: In the case of *Hannibal Railroad v. Swift*, the Supreme Court said:

As such carrier its duties and liabilities were plain. As a carrier of passengers it was bound, unless there was reasonable ground for refusal, to take all passengers who applied for passage, and their baggage, and as a carrier of goods, to take all other property offered for transportation and was responsible for the safe conveyance of the baggage and other property to the point for which they were destined or the termination of the road, unless prevented by unavoidable accident or the public enemy. Its obligations and liabilities in these respects were not dependent upon the contracts of the parties, though they might have been modified and limited by such contract; they were imposed upon it by the law from the public nature of its employment, independent of any contract.

Certainly the interstate-commerce act does not justify the defendants in their actions. In section 1 "transportation" is defined in these words:

"Transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration, or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

In the sixth paragraph it is provided that:

Any common carrier subject to the provisions of this act, upon application \* \* \* of any shipper tendering interstate traffic for transportation, shall construct, maintain, 15 I. C. C. Rep.

and operate upon reasonable terms a switch connection with such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper.

Section 3 says:

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines.

Section 23 of the act says:

That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement, and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ.

54 Fed. Rep., 750: In the case of the *Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co., et al.*, U. S. Circuit Court, Northern District of Ohio, March 25, 1893, the court said:

This suit was instituted by the Toledo A. A. & N. M. Ry. to compel the Lake Shore and Michigan Southern, the Pennsylvania Company, and other defendants to receive from it and deliver to it freight and cars destined from one state to another, commonly known as interstate freight, etc., and to enforce the third section of the interstate commerce act.

The bill in this case clearly entitles the complainant to the relief as against the defendant railroads, who were threatening to refuse to receive and to refuse to deliver interstate freight. The section of the interstate commerce law, above quoted, made it mandatory upon connecting railroads to receive and deliver passengers and freight and to afford equal facilities for the interchange of traffic. Corporations can act only through their officers, agents, and servants, so that the mandatory provisions of the law applying to the corporations apply with equal force to its officers and employees.

The decision in the above case was before the Supreme Court of the United States in *In re Lennon* (166 U. S., 548), and the Supreme Court said:

A bill brought solely to enforce compliance with the interstate commerce act and to compel railroad companies to comply with such act by offering proper and reasonable

facilities for interchange of traffic with the company complainant, and enjoining them from refusing to receive from complainant for transportation over their lines any cars which might be tendered them for acceptance, is a case arising under the Constitution and laws of the United States of which the circuit court has jurisdiction.

154 Fed. Rep., 379: In the United States circuit court, western district of Missouri, *Danciger et al. v. Express Company*, the syllabus of the decision is as follows:

A suit to compel an interstate carrier to receive and transport goods tendered to it for shipment which it wholly refuses to do is one to compel the performance of a duty imposed upon it by law and within the jurisdiction of the courts; a complainant is not required to resort in the first instance to the Interstate Commerce Commission.

94 U. S., 180: In *Winona & St. Peter R. R. Co. v. Blake*, it was said:

By its charter the Winona & St. Peter R. R. Co. was incorporated as a common carrier with all the rights and subject to all the obligations that name implies. It was, therefore, bound to carry when called upon for that purpose, and charge only a reasonable compensation for the carriage.

149 U. S., 686: *Union Pacific Ry. v. Goodridge*, the Supreme Court said:

It is no proper business of a common carrier to foster particular enterprises or to build up new industries, but, deriving its franchise from the legislature and depending upon the will of the people for its existence, it is bound to deal fairly with the people, to extend them reasonable facilities for the transportation of their persons and property, and to put all its patrons upon an absolute equality.

12 I. C. C. Rep., 183: *Wazelbaum & Co. v. A. C. L. R. R. Co.*, the Commission said:

So long, therefore, at least as these defendants hold themselves out as common carriers of peaches by publishing rates thereon, they must be held to have subjected themselves to all the requirements of the law. Under the amended act, common carriers subject thereto may not lawfully refuse transportation as therein defined, but must, upon reasonable request, forward the same upon established rates filed and kept posted as required by law.

13 I. C. C. Rep., 460: *Cardiff Coal Company v. C. M. & St. P. Ry. Co., et al.*, the Commission said:

An interstate carrier in order to build up enterprises of the same character on its own line and to prevent the trade of its local industries from being displaced by the competition of manufacturers of the same commodities on connecting lines, can not deny to industries on the lines of such connections the benefit of through routes and joint rates; nor is the fact that the revenues of the carrier may be reduced by establishing such through routes and joint rates a material consideration. It may be laid down as a general rule, admitting of no qualification, that a manufacturer or merchant who has traffic to move and is ready to pay a reasonable rate for the service, has a right to have it moved and to have reasonable rates established for the movement, regardless of the fact that the revenues of the carrier may be reduced by reason of its competition with other shippers in the same market; and he has the right also to have the benefit of through routes and reasonable joint rates to such distant markets if no reasonable or satisfactory through route already exists.



15 I. C. C. Rep., 460: *Chamber of Commerce of the City of Milwaukee v. the C., R. I. & P. Ry. Co.*, decided March 2, 1909. In this case the same ruling was made.

Our conclusions are that the facts in this case and the law applicable thereto do not justify the defendants in refusing to give to the complainants the same rates upon limestone and lime at Martinsburg as they give at Bunker Hill, and that it is the duty of the defendant, the Cumberland Valley Railroad Company, to cease and desist from its discriminations against the complainants in the transportation of limestone and lime from Martinsburg, W. Va., a station upon a route already established, and to publish and maintain the same rates on such products from Martinsburg as are applied from Bunker Hill.

An order will be made accordingly.

15 I. C. C. Rep.

No. 1920.  
DULUTH LOG COMPANY  
v.  
MINNESOTA & INTERNATIONAL RAILWAY COMPANY  
ET AL.

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*Submitted February 5, 1909. Decided April 6, 1909.*

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1. Complainant alleges that its shipment of poles over lines of defendants from La-porte, Minn., to Poplar Bluff, Mo., should have moved to St. Louis without passing through Kansas City, but it appeared that a representative of complainant directed that routing; *Held*, That it was the duty of the initial carrier to obey the specific routing instructions furnished by complainant. When a shipper names the carriers that are to transport his shipment, it must be assumed that he is relying upon his own investigations, and that for some reason he considers it expedient that the shipment move over the route indicated by him.
2. The record discloses that while defendants transported the shipment over the lines named by complainant, they did not route or carry it via the cheapest reasonable route available over the lines of the carriers specified in the shipping bill. If the shipment had moved over the Frisco Line from Kansas City to Poplar Bluff through Springfield, Mo., rather than through St. Louis a lower rate than the one collected would have been available; *Held*, That complainant was entitled to the lowest rate available via the Frisco Line and that damages should be awarded against that defendant for such misrouting.
3. The tariff under which the shipment moved did not provide for an allowance for the stakes furnished by complainant. Subsequently it was amended by inserting a provision making an allowance of 500 pounds on the weight of the shipment to cover stakes when they were so furnished. The defendants admit that this provision is a reasonable one and should have been incorporated in the tariff under which the shipment was made; *Held*, That complainant is entitled to an award of damages against all the defendants to cover allowance for stakes furnished by complainant.

*Albert Baldwin* for complainant.

*Charles A. Hart* for Minnesota & International Railway Company, Northern Pacific Railway Company, and Chicago Great Western Railway Company.

*E. B. Peirce* for St. Louis & San Francisco Railroad Company.

15 I. C. C. Rep.

## REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complainant, a corporation organized under the laws of Minnesota, is engaged in the business of handling lumber and other forest products at Duluth. On August 13, 1906, it shipped a carload of poles, weighing 38,500 pounds, over the lines of the defendants from Laporte, Minn., to Poplar Bluff, Mo., upon which freight charges were collected at a rate of 45½ cents per 100 pounds, amounting to \$175.18.

The rate charged on the shipment, apparently a combination of locals, was in cents per 100 pounds as follows: From Laporte, Minn., to Kansas City, Mo., 25 cents; from Kansas City to St. Louis, 9½ cents; and from St. Louis to Poplar Bluff, 11 cents; total, 45½ cents.

The complainant alleges that the shipment should have moved to St. Louis without passing through Kansas City, and then to Poplar Bluff, as there was available via this route a combination rate of 33 cents per 100 pounds, made up as follows: From Laporte to St. Louis, via M. & I. Ry., N. P. Ry., and St. L., K. & N. W., or Wabash R. R., (N. P. Ry. Tariff, I. C. C., No. A-1635), 22 cents; from St. Louis to Poplar Bluff (St. L. & S. F. R. R. Tariff, I. C. C., No. 5199), 11 cents; total, 33 cents.

Complainant asks reparation on the basis of the lower combination, as applied to the weight of the shipment.

The initial carrier, the Minnesota & International Railway Company, furnished an open car for the shipment, and complainant was compelled to use stakes to support and retain the poles upon the car, and it further asks that an allowance of 500 pounds be made on the weight of shipment for the stakes so furnished.

The evidence relating to the route over which the shipment should have moved, and upon which we must base a finding as to such fact, was a printed form shipping bill used and prepared by the complainant, which shows that it routed the shipment over the lines of the Minnesota & International Railway Company, the Northern Pacific Railway Company, the Chicago Great Western Railway Company, and the St. Louis & San Francisco Railroad Company. The Chicago Great Western Railway Company does not connect at St. Louis with the St. Louis & San Francisco Railroad Company, but only at Kansas City, Mo., and if the shipment had been carried direct to St. Louis without passing through Kansas City, carriers other than those named in the shipping ticket would have had to participate in the transportation. A representative of the complainant made out the shipping ticket which directed the routing, and the car moved over the lines named therein, and we hold that it was the duty of the initial carrier to obey the specific routing instructions furnished by

complainant, and route the shipment over the lines of the particular carriers named by complainant. When a shipper names the carriers that are to transport his shipment, it must be assumed that he is relying upon his own investigations and that for some reason he considers it expedient that the shipment move over the route indicated by him.

But our investigation discloses the fact that while defendants did transport the shipment over the lines named by complainant, they did not route or carry it via the cheapest reasonable route available over the lines of the carriers specified in the shipping bill. If the shipment had moved over the St. Louis & San Francisco Railroad, from Kansas City to Poplar Bluff through Springfield, Mo., rather than St. Louis, a lower rate than 45½ cents would have been available, based on Springfield, as follows:

Western Trunk Line Tariff, I. C. C. No. 812, effective July 6, 1905, in force at the time of the shipment, named a rate of 27½ cents per 100 pounds on lumber, poles, etc., in carloads, from Laporte, Minn., to Springfield, Mo., via the lines of the Minnesota & International Railway Company, the Northern Pacific Railway Company, the Chicago Great Western Railway Company, through Kansas City, Mo., and the St. Louis & San Francisco Railroad Company from that point to Springfield, Mo., St. Louis & San Francisco Railroad Tariff, I. C. C., No. 4908, effective October 1, 1904, in force on the date of shipment, used in connection with St. Louis & San Francisco Railroad distance table, I. C. C., No. 64646, named a rate of 12 cents per 100 pounds in carloads, applicable on lumber, poles, etc., from Springfield, Mo., to Poplar Bluff, Mo., making a combination through rate via this route of 39½ cents per 100 pounds.

The tariff under which the shipment moved did not provide for an allowance for the stakes furnished by the complainant. Subsequently it was amended by inserting a provision making an allowance of 500 pounds on the weight of the shipment to cover stakes when they were so furnished, and the defendants admit that this provision is a reasonable one and should have been incorporated in the tariff under which the shipment was made.

The shipper in this case was entitled to the lowest rate available via the Frisco line from Kansas City to Poplar Bluff, Mo. When the shipment was turned over to the Frisco line at Kansas City it should have been given routing via Springfield, Mo., thus making the lawful rate applicable upon such shipment 39½ cents per 100 pounds. The responsibility for such misrouting evidently rests upon the St. Louis & San Francisco road. This carrier, in the absence of contrary instructions, was in law required to haul the traffic by the route carrying the lowest rate available. It was not shown as against

the presumption of the law that the lowest rate would be applied, that either the shipper or the delivering carrier at Kansas City gave routing instructions via St. Louis, and we take it that the burden is upon the carrier against whom a charge of misrouting is made to show that it applied the lawful rate, and this the St. Louis & San Francisco Railroad did not establish, nor attempt to establish, in this case.

The Commission will therefore award damages against the St. Louis & San Francisco road in the sum of \$23.10, and against all defendants in the sum of \$1.90 to cover allowance for stakes furnished by complainant.

While the shipment involved in this case moved on August 13, 1906, and the complaint was filed December 4, 1908, more than two years thereafter, the claim set up in the complaint was filed informally with the Commission on November 20, 1907, at which time, under the rulings of the Commission, the statute of limitations ceased to run against it.

An order will be entered in accordance with these findings.

15 I. C. C. Rep.

No. 1578.

ARTHUR S. PHILLIPS

v.

NEW YORK & BOSTON DESPATCH EXPRESS COMPANY.

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*Submitted December 14, 1908. Decided April 5, 1909.*

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1. Complainant alleges that defendant's express charge of 60 cents per 100 pounds from Boston, Mass., to Bristol Ferry, R. I., 58 miles, is unreasonable when compared with defendant's 50-cent charge from Boston to Fall River, Mass., 51 miles; and that the Bristol Ferry minimum of 25 cents per package is excessive when compared with the Fall River minimum of 15 cents per package; *Held*, That the record does not sustain the contention. The dissimilarity in the conditions affecting express traffic to Fall River and Bristol Ferry explains and justifies the relation of the defendant's rates to the two points.
2. Defendant meets at Fall River the keen competition of another express company, which not only carries express matter to that point at a materially lower rate, but also maintains a minimum charge of 15 cents per package. In addition it performs a free pick-up and delivery service both at Boston and Fall River. Defendant is fairly entitled to adjust its rates to meet this competition, and in doing so can not be said to be guilty of an undue discrimination against Bristol Ferry, where no such competition exists.
3. The right of an express company to maintain a free package pick-up and delivery service at one point, while not maintaining such a service at another point, must necessarily be controlled by the conditions existing at each place. Because such a service is maintained at Fall River, where the volume of the traffic is large, and a wagon service can be conducted economically, it by no means follows that a like service must be maintained at Bristol Ferry, where the traffic is small and the cost of keeping up a wagon service might more than absorb all the revenue.

*Arthur S. Phillips* for complainant in person.

*T. B. Harrison, jr.*, for defendant.

#### REPORT OF THE COMMISSION.

**HARLAN**, *Commissioner*:

In this proceeding the complainant charges the defendant with practicing a discrimination against Bristol Ferry, a point on the New York, New Haven & Hartford Railroad in the state of Rhode Island. It is alleged that the rates of the defendant from Boston to Bristol Ferry are excessive and unreasonable when compared with its rates

from Boston to Fall River, the latter being an extensive manufacturing town on the rails of the same carrier in the state of Massachusetts. The record does not disclose the extent of territory covered by the defendant's express service nor does it indicate all the rail or water lines upon which it operates. It appears, however, that it carries express matter on the passenger trains of the New York, New Haven & Hartford Railroad between Boston and Newport. Our examination of its rate system will therefore be limited to its schedules in effect between those two points.

For many years the defendant has maintained four rate groups or zones between Boston and Newport. The first zone south of Boston is about 20 miles wide, and the defendant's rate to its express stations within that zone is 35 cents per 100 pounds. The next zone to the south is of approximately the same width and takes a rate from Boston of 40 cents per 100 pounds. The controversy arises out of the relation of the rates from Boston to the third and fourth zones. The third zone is about 10 miles wide and reaches to and includes Fall River, which is 51 miles distant from Boston. To points in this zone the rate is 50 cents per 100 pounds with a minimum charge of 15 cents on packages of 5 pounds and under in weight; on packages of over 5 pounds in weight the rate is graded up in proportion to the number of additional pounds. The fourth zone is about 20 miles wide and to stations in this zone the defendant's rate from Boston is 60 cents per 100 pounds with a minimum of 25 cents per package. Newport, which is 69 miles distant from Boston, is within the fourth zone, as are also Tiverton, Bristol Ferry, and Portsmouth, which are in Rhode Island between Fall River and Newport, Tiverton being between Fall River and Bristol Ferry.

It will be observed that no complaint is made on behalf either of Tiverton or Newport. The complaint is made by a resident of Bristol Ferry, which is between those two points. The petitioner alleges that the defendant's rate of 60 cents per 100 pounds to Bristol, 58 miles distant from Boston, is unreasonable when compared with the 50-cent rate to Fall River, and that the Bristol minimum of 25 cents per package is excessive and unreasonable when compared with the Fall River minimum of 15 cents per package. His contention is that the third zone instead of being 10 miles in width should be extended to a width of 20 miles. It would then include Bristol Ferry and would give it the Fall River rate. He also contends that the rate to points in that zone should be 45 cents per 100 pounds instead of 50 cents.

After a careful examination of the record, we are led to conclude that the complaint is without merit. The record wholly fails to justify a finding that the defendant's rates from Boston to Bristol Ferry

are unreasonable in and of themselves. Until July 9, 1906, the rate to Fall River was 60 cents per 100 pounds and the rate to Newport and stations between Newport and Fall River, including Bristol Ferry, was 75 cents per 100 pounds. During that month the rate to Fall River was reduced to the present basis of 50 cents per 100 pounds and to Bristol Ferry and other points in the fourth zone to 60 cents. In the meantime the cost of operation, as the defendant asserts, has largely increased. It is definitely stated that during the year 1907 the increase over the previous year in the item of wages alone amounted to \$30,000. It is also stated that a like increase resulted during that year in the item of stable expenses. The net result of the defendant's business for the year 1907 is said to have been a deficit over the cost of operation to the amount of \$80,000. We have made no examination of its accounts, but assuming the accuracy of these statements it is clear that under its present schedule of rates the business of the defendant is not unduly profitable.

Nor do we find that the record sustains the contention that the defendant's rate adjustment results in an unlawful discrimination in favor of Fall River as against Bristol Ferry. About 300 local express companies operate in the New England territory and many of them on railroads. The defendant asserts that it comes into competition with about 50 of such companies. At Fall River it has to contend with the Boston, Fall River & Providence Express Company which operates on freight trains between Boston and Fall River and furnishes its patrons a free pick-up and delivery service at both places. It makes two shipments of express matter each day, one leaving Boston at night, from which early morning deliveries are made at Fall River, and the other leaving Boston in the morning in time to enable that company to make deliveries at Fall River the same afternoon. Its rate to Fall River is 40 cents per 100 pounds, and it also makes a minimum charge of 15 cents per package. The defendant is compelled to meet this competition; and while its superior and more frequent service on passenger trains has apparently enabled it to maintain its charge of 50 cents per 100 pounds in competition with the charge of 40 cents per 100 pounds made by this competitor, it has not been able to maintain to Fall River a higher minimum than 15 cents per package.

There are other points of dissimilarity in the conditions affecting express traffic to Fall River and Bristol that explain and justify the relation of the defendant's rates to the two points. The census of 1900 gave to Fall River a population of 104,863 inhabitants. The population of Newport at that time was 22,034, and of Tiverton 2,977. The same census report shows but 73 residents at Bristol Ferry. Since the census of 1900 was taken there has been a marked growth



in population at Fall River, Tiverton, and Newport. Bristol Ferry has not increased appreciably in size, but is still simply a place of residence for a small summer colony. The real occasion for the complaint, as we understand the record, is that department stores and other commercial houses of Boston that supply domestic wants make free deliveries to their customers within the first, second, and third zones. For the greater part of the year the complainant resides at Fall River, and is therefore under no expense in having his household purchases delivered to him while there. But during the summer months he lives at Bristol Ferry, and as the merchants do not make free deliveries in the fourth zone he is compelled to pay express charges during the summer season. We assume that his object in bringing this proceeding is to avoid these charges in the future by having Bristol Ferry included within the third zone. The record shows that he frequently has his purchases delivered at Fall River, where he gets them free of charges, and from that point carries the parcels by hand to Bristol Ferry.

The free delivery made by the Boston merchants to their customers at points within the first three zones, including Fall River, is a matter that does not lie within the control of the defendant. They pay the regular rates of the defendant and make no charge against their customers, hoping, doubtless, in that way to secure and hold their trade. In order to put themselves on an equal footing with the local houses the Boston merchants have found it to their advantage to make free deliveries at Fall River, which is now a place of 110,000 inhabitants, but they have not deemed it profitable to extend their free deliveries 8 miles farther south to Bristol Ferry, with its population of only 73 inhabitants.

There is another feature in the defendant's service at Fall River of which complaint is made on the ground that the same service is not given at Bristol Ferry. On all express matter carried by it the defendant maintains a free pick-up and a free delivery service in Boston. It also makes free store-door or house-door deliveries at Fall River. Bristol Ferry does not enjoy the advantage of a similar service. While parcels carried by the defendant to or from Bristol Ferry are picked up or delivered at Boston free of charge, they are not picked up or delivered at all at Bristol Ferry. The defendant maintains no wagon service at that point. The complainant asserts that this works a discrimination against him and other inhabitants of Bristol Ferry. So long as the defendant gives a free pick-up and delivery service to merchants and others at Fall River, he contends that a similar free service should be performed by it at Bristol Ferry. He also insists that the minimum charge of 25 cents per package at Bristol Ferry is excessive and unreasonable

when compared with a minimum charge of 15 cents at Fall River, especially in view of the fact that at the latter place there is a free pick-up and delivery service, while at Bristol Ferry no such service is performed.

In *Detroit, Grand Haven & Milwaukee Railway Company v. Interstate Commerce Commission*, 74 Fed. Rep., 803, affirmed in 167 U. S., 633, one of the points under consideration was whether a free-cartage service rendered by a carrier to its shippers at Grand Rapids was a discrimination against shippers at Ionia, who were not accorded the benefit of a similar service although charged the same rate. Grand Rapids is a large manufacturing point, while Ionia is a small town; and it was shown that the free cartage furnished by the carrier at Grand Rapids was made necessary by competitive conditions at that point. It was held by the lower court, and in this it was sustained by the court of last resort, that the free cartage resulting from competitive conditions at Grand Rapids was not an undue discrimination against shippers at Ionia, where such conditions did not exist and where little business was done by the carrier compared to the volume of its traffic to and from Grand Rapids.

As now advised, we see no reason why the principle of that case should not apply to express companies. The defendant here, as has been indicated, meets at Fall River the keen competition of the Boston, Fall River & Providence Express Company, which not only carries express matter to that point at a materially lower rate, but also maintains a minimum charge of 15 cents per package. In addition it performs a free pick-up and delivery service both at Boston and Fall River. The defendant is fairly entitled to adjust its rates to meet this competition, and in doing so can not be said to be guilty of an undue discrimination against Bristol Ferry, where no such competition exists. Nor can it be said to be guilty of a rate discrimination when, to meet competition, it maintains a minimum of 15 cents per package at Fall River while demanding a minimum of 25 cents per package at Bristol Ferry. The right of an express company to maintain a free package pick-up and delivery service at one point, while not maintaining such a service at another point, must necessarily be controlled by the conditions existing at each place. An express service at a large commercial and manufacturing town like Fall River that does not include a free pick-up and delivery would not meet the present-day requirements, and would be wholly unsatisfactory. But because such a service is maintained at Fall River, where the volume of the traffic is large, and a wagon service can be conducted economically, it by no means follows that a like service must be maintained at Bristol Ferry, where the traffic is small and the cost of keeping up a wagon service might more than absorb all

the revenue. Under such circumstances it can not fairly be said that the defendant unduly discriminates against Bristol Ferry and its 73 inhabitants when it declines to maintain a free delivery there.

If anything further is needed to indicate the lack of real substance and equity in the complaint, it may be well to call attention to the fact that during the year ending December 31, 1907, the express business done by the defendant at Fall River netted it a gross revenue of \$64,748.92, while the business done at Bristol Ferry during the same year yielded it a gross revenue of only \$276.11, a sum probably not sufficient even to pay the salary of an agent. As a matter of fact the defendant has not maintained an agent of its own at Bristol Ferry, but pays the railroad station agent at that point a certain percentage of its revenues for looking after its express business.

Upon the whole record we see no merit in the complaint, and the petition must therefore be dismissed. It will be so ordered.

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CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED  
REPORT DURING THE TIME COVERED BY THIS VOLUME.

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1081. LANING-HARRIS COAL & GRAIN COMPANY *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.—Distribution of cars for hay at Quapaw, Ind. T. *E. L. Shepherd* for complainant. *E. B. Peirce* and *M. A. Low* for defendant. January 27, 1909. Dismissed for want of prosecution.

1104. R. MILNE *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.—Distribution of cars for hay at Miami, Ind. T. *E. L. Shepherd* and *Clark Croycroft* for complainant. *E. B. Peirce* and *M. A. Low* for defendant. January 27, 1909. Dismissed for want of prosecution.

1105. WILLS & BOTTS *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.—Distribution of cars for hay at Miami, Ind. T. *E. L. Shepherd* and *Clark Croycroft* for complainant. *E. B. Peirce* and *M. A. Low* for defendant. January 27, 1909. Dismissed for want of prosecution.

1195. ALASKA LUMBER COMPANY *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL.—Rates on shingles, Edgcomb, Wash., to El Paso, Tex. T. W. *Tresidden* for complainant. *Gardiner Lathrop*, *Robert Dunlap*, *C. W. Bunn*, *Emerson Hadley*, and *Hale Holden* for defendants. January 5, 1909. Reparation awarded.

1342. PENNSYLVANIA & INDIANA COAL COMPANY *v.* SOUTHERN INDIANA RAILWAY COMPANY.—Distribution for cars for coal from mines in Green County, Ind. J. M. *McAdam* for complainant. *Carl E. Wood* and *W. T. Abbott* for defendant. February 8, 1909. Dismissed for want of prosecution.

1410. E. I. DU PONT DE NEMOURS POWDER COMPANY *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.—Advance in rates on nitrate of soda from Philadelphia to Iowa, Illinois, Michigan, Ohio, West Virginia, and Wisconsin. J. B. D. *Edge* for complainant. *Chas. H. Heebner*, *John G. Wilson*, *Geo. Stuart Patterson*, and *Geo. V. Massey* for defendants. January 5, 1909. Dismissed without prejudice, on motion of complainant.

1488. CANADIAN EXPRESS COMPANY *v.* WELLS, FARGO & COMPANY.—Division of joint rates. W. W. *Williamson* for complainant. *Chas. W. Stockton* for defendant. March 30, 1909. Dismissed on motion of complainant.

1545. **ELWOOD GRAIN COMPANY v. CHICAGO GREAT WESTERN RAILWAY COMPANY ET AL.**—Elevator allowance on corn from St. Joseph, Mo., to Louisville, Ky. *Frank J. Delaney* and *N. S. Shannon* for complainant. *R. E. Culver*, *A. G. Briggs* and *N. S. Brown* for defendants. February 3, 1909. Dismissed on motion of complainant.

1546. **SUPERIOR REFINING COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.**—Rates on crude oil, Watova, Okla., to Longton, Kans. *F. S. Bennett* for complainant. *James Hagerman*, *Joseph M. Bryson*, *Martin L. Clardy*, *James C. Jeffery*, *Robert Dunlap*, and *T. J. Norton* for defendants. January 7, 1909. Dismissed; complaint satisfied.

1563. **R. B. HAGER v. CHICAGO & NORTHWESTERN RAILWAY COMPANY ET AL.**—Refusal of privilege of "inspection" of potatoes from Fairfax, S. Dak., to Kansas City, Mo. *C. W. Durbin* for complainant. *Martin L. Clardy* and *James C. Jeffery* for defendants. January 28, 1909. Dismissed on motion of complainant.

1661. **LATHAM BROS. v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.**—Rates on "wool in the grease," Lake Valley, N. Mex., to Chicago, Ill. *J. H. Latham* for complainant. *Robert Dunlap*, *James L. Coleman*, and *A. A. Hurd* for defendant. January 5, 1909. Reparation awarded.

1676. **FRICK-REID SUPPLY COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.**—Rates on oil-well machinery, Van Buren, Ind., to Bartlesville, Okla. *E. Wilson* for complainant. January 13, 1909. Transferred to special reparation docket.

1746. **PENROD WALNUT & VENEER COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.**—Classification of walnut veneer in Western Classification territory. *S. F. Prouty* for complainant. *M. A. Low*, *C. M. Miller*, *A. A. Hurd*, *Wm. Ellis*, *George H. Crosby*, *H. J. Nelson*, and *Kimbrough Stone* for defendant. February 3, 1909. Dismissed without prejudice; complaint satisfied.

1752. **LINCOLN-SPRINGFIELD COAL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Rates on coal from Lincoln, Ill., to Webb, Iowa, routed via Custer, Ill. *Felix J. Streyckmans* and *T. J. Dorlan* for complainant. *F. G. Wright*, *Wm. Ellis*, *Robert Dunlap*, *T. J. Norton*, and *James L. Coleman* for defendants. January 6, 1909. Reparation awarded.

1754. **DULUTH LOG COMPANY v. MINNESOTA & INTERNATIONAL RAILWAY COMPANY ET AL.**—Rates on poles, Laporte, Minn., to Lebanon, Mo. *W. A. Anderson* for complainant. *Chas. W. Bunn*, *W. H. Gemmell*, and *E. B. Peirce* for defendants. February 8, 1909. Reparation awarded.

1804. **M. H. ALEXANDER COMPANY v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.**—Refusal of defendant to

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establish and maintain switch connection with complainant's factory at Cincinnati, Ohio. *Jones & James* for complainant. *Marxwell & Ramsey* for defendant. March 2, 1909. Dismissed without prejudice; complaint satisfied.

1813. *NORTHEASTERN PAVING & CONSTRUCTION COMPANY v. BOSTON & MAINE RAILROAD*.—Rates on broken stone, Salem, Mass., to Woodfords, Me. *Walter S. M. Kelley* for complainant. *Edgar J. Rich* for defendant. January 28, 1909. Reparation awarded.

1833. *JAMES & GRAHAM WAGON COMPANY v. MOBILE & OHIO RAILROAD COMPANY ET AL.*—Rates on wagon felloes, Brooksville, Miss., to Memphis, Tenn. *G. M. Stephen* for complainant. *R. Walton Moore* and *Ed. Baxter* for defendants. February 11, 1909. Transferred to special reparation docket.

1834. *FRICK-REID SUPPLY COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.*—Rates on wire rope from Pittsburg, Pa., to Tulsa, Okla. *E. Wilson* for complainant. *A. P. Burgwin*, *C. B. Fernald*, *Martin L. Clardy*, *James C. Jeffery*, and *Edgar A. de Menles* for defendants. March 2, 1909. Dismissed on motion of complainant.

1904. *GENERAL CHEMICAL COMPANY v. PENNSYLVANIA COMPANY ET AL.*—Rate on pyrites cinder, Cleveland, Ohio, to Pulaski, Va. *Steele*, *Otis* and *Hall* for complainant. *R. Walton Moore*, *Ed. Baxter*, *A. P. Burgwin*, and *C. B. Fernald* for defendants. February 8, 1909. Reparation awarded.

1928. *FRICK-REID SUPPLY COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Rates on wrought iron, St. Louis, Mo., to points in Oklahoma. *Veasey* and *Rowland* for complainant. *Martin L. Clardy*, *James C. Jeffery*, *Robert Dunlap*, *T. J. Norton*, *James L. Coleman*, and *E. B. Peirce* for defendants. January 23, 1909. Dismissed without prejudice, on motion of complainant.

1930. *F. H. STRONG v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY*.—Rates on furniture, Chicago, Ill., to Albuquerque, N. Mex. *G. M. Stephen* for complainant. *Robert Dunlap* and *T. J. Norton* for defendant. February 11, 1909. Dismissed on motion of complainant.

2042. *NORTH TEXAS TRACTION COMPANY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.*—Rates on slack coal, Arkansas and eastern Oklahoma to Handley, Tex. *S. B. Canty*, *S. H. Cowan*, and *John B. Daish* for complainant. *S. W. Moore* and *Fred H. Wood* for defendants. February 1, 1909. Dismissed on motion of complainant.

2072. *GUNTER BROS. v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY*.—Rate on stock, Haverhill, Kans., to Chicago, Ill. *A. C.* and *D. F. Gunter* for complainants. *Wm. Ellis* for defendant. February 5, 1909. Dismissed; complaint satisfied.

15 I. C. C. Rep.



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**APPENDIX.**

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**TABLE OF COMMODITIES IN THE DECISIONS OF  
THE INTERSTATE COMMERCE COMMISSION,  
1887-1909.**

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**INTERSTATE COMMERCE COMMISSION REPORTS, VOLS. I-XV.**





# TABLE OF COMMODITIES IN THE DECISIONS OF THE INTERSTATE COMMERCE COMMISSION, 1887-1909.

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- AGATE WARE.** Boston and New York to Nashville and Chattanooga, Tenn. Chamber of Commerce of Chattanooga *v.* So. Ry. Co. 10 I. C. C. 111.
- AGRICULTURAL IMPLEMENTS.** Eureka Springs, Ark., to St. Louis, Mo. Cary *v.* Eureka Springs Ry. Co. 7 I. C. C. 286.  
Liverpool to California via St. Louis, Mo. New York Board of Trade and Transportation *v.* P. R. R. Co. 4 I. C. C. 447.  
Los Angeles, Cal., to Phoenix, Ariz. Shippers Union of Phoenix *v.* A. T. & S. F. Ry. Co. 9 I. C. C. 250.  
St. Louis, Mo., to Dallas, Tex. Dallas Freight Bureau *v.* M. K. & T. Ry. Co. 12 I. C. C. 427.  
San Bernardino, Cal., from Chicago, Ill. San Bernardino Board of Trade *v.* A. T. & S. F. Ry. Co. 4 I. C. C. 104.
- AGRICULTURAL MACHINERY.** Bancroft, Tex., to Crowley, La. Advance Thresher Co. *v.* Orange & N. W. R. R. Co. 15 I. C. C. 599.
- ALCOHOL.** St. Louis, Mo., to Dallas, Tex. Dallas Freight Bureau *v.* M. K. & T. Ry. Co. 12 I. C. C. 427.
- ALCOHOL, DENATURED.** To Northern Pacific coast terminals. Railroad Com. of Oregon *v.* C. & A. R. R. Co. 12 I. C. C. 541.
- ALFALFA AND MEAL.** From Roswell, N. Mex., to Fort Worth. Roswell Commercial Club *v.* A. T. & S. F. Ry. Co. 12 I. C. C. 339.
- AMMUNITION.** Norfolk, Va., to Annapolis, Md. U. S. *v.* N. Y. P. & N. R. R. Co. 15 I. C. C. 233.
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- ANTHRACITE COAL.** See COAL.
- APPLES.** Charleston to northeast. Truck Farmers Asso. *v.* Northeastern R. R. Co. of South Carolina. 6 I. C. C. 295.  
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Illinois to New York. White & Co. *v.* B. & O. S. W. R. R. Co. 12 I. C. C. 306.  
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Siloam Springs, Ark., to Houston, Tex. Desel-Boettcher Co. *v.* K. C. S. Ry. Co. 12 I. C. C. 220.
- ASBESTOS ROOFING.** Summerdale, Ill., to Lima, Ohio. Chicago Fire Proof Covering Co. *v.* C. & N. W. Ry. Co. 8 I. C. C. 316.
- ASPARAGUS.** Charleston to northeast. Truck Farmers Asso. *v.* N. E. R. R. Co. of S. C. 6 I. C. C. 295.
- ASTRAGALS.** See PLANING MILL PRODUCTS.

**AUTOMOBILES.** Beatrice, Nebr., to Kenosha, Wis. *Whitcomb v. C. & N. W. Ry. Co.* 15 I. C. C. 27.

**AXES.** St. Louis, Mo., to Dallas, Tex. *Dallas Freight Bureau v. M. K. & T. Ry. Co.* 12 I. C. C. 427.

**BACON.** Savannah to Pensacola and Atlantic points. *Savannah Bureau of Freight and Transportation v. L. & N. R. R. Co.* 8 I. C. C. 377.

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**BAGGAGE, FREE.** *Traders' & Travelers' Union v. P. & R. R. R. Co.* 1 I. C. C. 122.

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**BAGS.** Missouri River to San Bernardino. *San Bernardino Board of Trade v. A. T. & S. F. Ry. Co.* 4 I. C. C. 104.

**BAGS, BURLAP.** Chicago and Indianapolis to St. Louis, Mo. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 15 I. C. C. 504.

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**BALED STRAW.** Center Point, Iowa, to Chicago, Ill. *Mason v. C. R. I. & P. Ry. Co.* 12 I. C. C. 61.

**BALL CARTRIDGES.** Norfolk, Va., to Annapolis, Md. *U. S. v. N. Y. P. & N. R. R. Co.* 15 I. C. C. 233.

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**BANANAS.** Charleston to Danville. *Gardner & Clark v. So. Ry. Co.* 10 I. C. C. 342.

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New Orleans, La., to El Paso, Tex. *Payne v. M. L. & T. R. R. & S. S. Co.* 15 I. C. C. 185.

**BAR IRON.** Pueblo to San Francisco. *Colorado Fuel & Iron Co. v. So. Pac. Co.* 6 I. C. C. 488.

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**BARLEY.** Cannon Falls, Minn., etc., to Chicago, Ill., etc. *Cannon Falls Farmers' Elevator Co. v. C. G. W. Ry. Co.* 10 I. C. C. 650.

**EX LAKE.** *Paine Bros. v. L. V. R. R. Co.* 7 I. C. C. 218.

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Scalage deductions, elevators at Baltimore. *Baltimore Chamber of Commerce v. P. R. R. Co.* 15 I. C. C. 341.

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**BARREL MATERIAL.** Hawkinsville, Ga., from Arkansas and Tennessee. *Holmes & Co. v. So. Ry. Co.* 8 I. C. C. 561, 570.

- BEANS.** Boston and New York to Chattanooga. Chattanooga Chamber of Commerce *v.* So. Ry. Co. 10 I. C. C. 111.  
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- BEANS, CANNED.** Chicago and St. Paul to Spokane. City of Spokane *v.* Nor. Pac. Ry. Co. 15 I. C. C. 376.
- BEDS.** Denver, Colo., to San Francisco, etc. Kindel *v.* A. T. & S. F. Ry. Co. 8 I. C. C. 608.  
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- BEDROOM SETS.** Lansing, Mich., to Oakland, Cal. Potter Mfg. Co. *v.* C. & G. T. Ry. Co. 5 I. C. C. 514.
- BED SLATS.** Omaha, Nebr., to Chicago, Ill. Murphy, Wasey Co. *v.* Wabash R. R. Co. 5 I. C. C. 122.
- BEEF CATTLE.** Fort Worth, Tex., to Birmingham, Ala. Birmingham Packing Co. *v.* T. & P. Ry. Co. 12 I. C. C. 29; 500.  
 Fort Worth, Tex., to New Orleans, La. New Orleans Live Stock Exchange *v.* T. & P. Ry. Co. 10 I. C. C. 327.  
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- BEER.** Cincinnati to Middlesboro, Ky. Gerke Brewing Co. *v.* L. & N. R. R. Co. 5 I. C. C. 596.  
 Milwaukee, Wis., to Roswell, N. Mex. Pilant *v.* A. T. & S. F. Ry. Co. 15 I. C. C. 178.  
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 Mixed C. L. with mineral water. Milwaukee-Waukeesa Brewing Co. *v.* C. M. & St. P. Ry. Co. 13 I. C. C. 28.  
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- BELLS.** Hillsboro, Ohio, to Mexico. C. S. Bell *v.* B. & O. S. W. R. R. Co. 9 I. C. C. 632.
- BELTING.** Chicago and St. Paul to Spokane. City of Spokane *v.* Nor. Pac. Ry. Co. 15 I. C. C. 376.
- BERRIES.** Michigan to interstate points. In re Charge for Transportation and Refrigeration of Fruit. 11 I. C. C. 129.
- BICYCLES.** Chicago and St. Paul to Spokane. City of Spokane *v.* Nor. Pac. Ry. Co. 15 I. C. C. 376.  
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- BIG VEIN COAL.** See COAL.
- BILLETS AND BLOOMS.** Pueblo, Colo., to San Francisco, Cal. Colorado Fuel & Iron Co. *v.* So. Pac. Co. 6 I. C. C. 488.  
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**BLACKING.** Liverpool to San Francisco. *New York Board of Trade v. P. R. R. Co.* 4 I. C. C. 447.

**BLACKING BRUSHES.** Classification. *Derr Mfg. Co. v. Pa. R. R. Co.* 9 I. C. C. 646.

**BLANK BOOKS.** Chicago and St. Paul, Minn., to Spokane. *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.

**BLANKETS.** Pacific coast to Denver, Colo. *Kindel v. A. T. & S. F. Ry. Co.* 9 I. C. C. 606.

**BLINDS.** See **PLANING MILL PRODUCTS**.

**BLOOMS.** See **BILLETS**.

**BLOWERS.** St. Louis, Mo., to Dallas, Tex. *Dallas Freight Bureau v. M. K. & T. Ry. Co.* 12 I. C. C. 427.

**BOARDS.** Points east of Mississippi River in Louisiana, Mississippi, and part of Alabama to Ohio River points. *Central Yellow Pine Asso. v. I. C. R. R. Co.* 10 I. C. C. 505.

**BOILERS.** Kalamazoo, Mich., to New Glarus, South Wayne, Monticello, and Monroe, Wis. *Lindsay Bros. v. Mich. Cent. R. R. Co.* 15 I. C. C. 40.  
Kalamazoo, Mich., to Woodford and Argyle, Wis. *Lindsay Bros. v. G. R. & I. Ry. Co.* 15 I. C. C. 182.  
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**BONES.** Eureka Springs, Ark., from St. Louis. *Cary v. Eureka Springs Ry. Co.* 7 I. C. C. 286.

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**BOOKS, BLANK.** Chicago and St. Paul to Spokane. *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.

**BOOTS AND SHOES.** Chicago and St. Paul to Spokane. *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.  
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**BOTTLES.** San Bernardino, Cal., from Michigan. *San Bernardino (Cal.) Board of Trade v. A. T. & S. F. Ry. Co.* 4 I. C. C. 104.

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**BOXES.** Return of empties from New York. *Society of American Florists, etc., v. United States Express Co.* 12 I. C. C. 120.

- BOXES, TIN.** Chicago and St. Paul to Spokane. *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.
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- BRASS BEDSTEADS.** Kenosha, Wis., to Los Angeles, Cal. *Pacific Purchasing Co. v. C. & N. W. Ry. Co.* 12 I. C. C. 549.
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**BUTTERMILK.** Jersey City group rate. Milk Producers' Asso. v. D. L. & W. R. R. Co. 7 I. C. C. 92.

**BUTTONS.** Liverpool to San Francisco. New York Board of Trade v. P. R. R. Co. 4 I. C. C. 447.

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**CANNED PEASE.** Chicago and St. Paul to Spokane. *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.

**CANNED VEGETABLES.** Green Bay, Wis., to Washington, Ohio. *Larsen Canning Co. v. C. & N. W. Ry. Co.* 13 I. C. C. 286.

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**CANS, EMPTY.** Return to Omaha. *Fairmont Creamery Co. v. Pac. Express Co.* 15 I. C. C. 134.

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- CEMENT, COAL TAR.** Classification, Ensley, Ala., to Lagrange, Ga. Barrett Mfg. Co. v. L. & N. R. R. Co. 15 I. C. C. 196.
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- CEREALS.** Classification, mixed carloads. Schumacher Milling Co. v. C. R. I. & P. Ry. Co. 6 I. C. C. 61.  
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- CHAIR STUFF.** Chicago, Ill., to Omaha, Nebr. Murphy, Wasey & Co. v. Wabash R. R. Co. 5 I. C. C. 122.
- CHAMPAGNE.** Los Angeles, Cal., to Phoenix, Ariz. Shippers' Union of Phoenix v. A. T. & S. F. Ry. Co. 9 I. C. C. 250.
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- Bitters. Pittsburg, Pa., to markets. Myers *v.* Pa. Co. 2 I. C. C. 573; 3 I. C. C. 130.
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- Brushes. Baltimore, Md., to markets. Derr Mfg. Co. *v.* Pa. R. R. Co. 9 I. C. C. 646.
- Burial vaults. Official territory. Van Camp Burial Vault Co. *v.* C. I. & L. Ry. Co. 2 I. C. C. 79.
- Castings, japanned. Indianapolis Freight Bureau *v.* C. C. C. & St. L. Ry. Co. 15 I. C. C. 504.
- Celery. Tecumseh, Mich., to Kansas City. Tecumseh Celery Co. *v.* C. J. & M. R. R. Co. 5 I. C. C. 663.
- Cereal products. Western Classification west of Chicago. Schumacher Milling Co. *v.* C. R. I. & P. Ry. Co. 6 I. C. C. 61.
- Chewing gum. Wrigley *v.* C. C. C. & St. L. Ry. Co. 10 I. C. C. 412.
- Chinaware, etc. Union Pacific Tea Co. *v.* Pa. R. R. Co. 14 I. C. C. 545.
- Coal, Pennsylvania to New Jersey. Cox Bros. & Co. *v.* L. V. R. R. Co. 4 I. C. C. 535.
- Coat hooks, wire. Forest City Freight Bureau *v.* A. A. R. R. Co. 13 I. C. C. 118.
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- Dried fruit. San Francisco to Denver. Martin *v.* So. Pac. Co. 2 I. C. C. 1.
- Dynamos, old. Marietta, Ga., to Cleveland, Ohio. National Machinery & W. Co. *v.* P. C. C. & St. L. Ry. Co. 11 I. C. C. 583.
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- Electrical apparatus. Western Classification territory. Scheldel & Co. *v. C. & N. W. Ry. Co.* 11 I. C. C. 532.
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- COTTON BATTING.** Danville to south. *Crews v. R. & D. R. R. Co.* 1 I. C. C. 401.
- COTTON DUCK.** Chicago and St. Paul to Spokane. *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.
- COTTON FABRICS.** Indianapolis to Ohio River crossings. *Indianapolis Freight Bureau v. C. C. & St. L. Ry. Co.* 15 I. C. C. 367.
- COTTON LINTERS.** Malden, Mo., to Minneapolis, Minn. *Falls & Co. v. C. R. I. & P. Ry. Co.* 15 I. C. C. 269.
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- COTTON PIECE GOODS.** Atlantic Seaboard to Wichita via Galveston. *Johnston-Larimer Dry Goods Co. v. A. T. & S. F. Ry. Co.* 13 I. C. C. 388.
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- DOMESTIC GRAIN.** Missouri River points to Atlantic seaboard. Bulte Milling Co. *v.* C. & A. R. R. Co. 15 I. C. C. 351.
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- Reconsignment, Cairo, Ill. *Kehoe & Co. v. I. C. R. R. Co.* 14 I. C. C. 541.
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**HEATERS.** Chicago and St. Paul to Spokane. *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.

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**HERBS.** Denver from Pacific coast. *Kindel v. A. T. & S. F. Ry. Co.* 9 I. C. C. 606.

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- LETTER COPIERS.** Western Classification territory. Yawman & Erbe Mfg. Co. v. A. T. & S. F. Ry. Co. 15 I. C. C. 260.
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- Oregon and Washington to eastern markets. *Oregon & Wash. Lumber Mfrs. Asso. v. U. P. R. R. Co.* 14 I. C. C. 1.
- Pacific northwest, east, and south. *Pacific Coast Lumber Mfrs. Asso. v. Nor. Pac. Ry. Co.* 14 I. C. C. 23.
- Paper Mills, Oreg., to Queen Junction, Pa. *American Lumber & Mfg. Co. v. So. Pac. Co.* 14 I. C. C. 561.
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- Saginaw to New York and New Jersey. *Mershon, Schuette, Parker & Co. v. C. R. R. of N. J.* 10 I. C. C. 456.
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- POTATOES.** Cadillac to Texas points. *Freeman v. A. T. & S. F. Ry. Co.* 7 I. C. C. 202.  
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- POWDER, SALUTING.** Norfolk, Va., to Annapolis, Md. *U. S. v. N. Y. P. & N. R. R. Co.* 15 I. C. C. 233.
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- PRUNES.** New York to Chicago. *Thurber v. N. Y. C. & H. R. R. R. Co.* 3 I. C. C. 473.
- PULP WOOD.** Rhinelander, Wis., from Duluth. *Rhinelander Paper Co. v. Nor. Pac. Ry. Co.* 13 I. C. C. 633.
- PUMPS.** St. Louis, Mo., to Dallas, Tex. *Dallas Freight Bureau v. M. K. & T. Ry. Co.* 12 I. C. C. 427.  
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- PYRITES CINDER.** Buffalo, N. Y., to points in Pennsylvania and New Jersey. *Naylor & Co. v. L. V. R. R. Co.* 15 I. C. C. 9.
- QUICKSILVER.** Denver from Pacific coast. *Kindel v. A. T. & S. F. Ry. Co.* 9 I. C. C. 606.
- RADIATORS.** Classification. *Business Men's League of St. L. v. A. T. & S. F. Ry. Co.* 9 I. C. C. 318.
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- RAILS, STEEL.** Johnstown, Pa., to Seattle, Wash. *Cambria Steel Co. v. G. N. Ry. Co.* 12 I. C. C. 466.

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- SALT.** Hutchinson, Kans., to Missouri River. In re Transportation of Salt from Hutchinson, Kans. 10 I. C. C. 1.  
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- SALUTING POWDER.** Norfolk, Va., to Annapolis, Md. U. S. v. N. Y. P. & N. R. R. Co. 15 I. C. C. 233.
- SAND.** Dock Siding to Chicago. Castle v. B. & O. R. R. Co. 8 I. C. C. 333.
- SASH.** See PLANING-MILL PRODUCTS.
- SASH AND DOORS.** Chicago, Ill., to Williamson, W. Va. Chicago Sash and Door Asso. v. N. & W. Ry. Co. 14 I. C. C. 594.
- SASH, DOORS, AND BLINDS.** Eureka Springs, Ark., to St. Louis. Cary v. Eureka Springs Ry. Co. 7 I. C. C. 286.
- SAUCES.** Chicago and Indianapolis to St. Louis. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 15 I. C. C. 504.
- SAWMILL MACHINERY.** Ogemaw, Ark., to Sodus, La. Pleasant Hill Lumber Co. v. St. L. S. W. Ry. Co. 15 I. C. C. 532.
- SAWS.** Chicago and St. Paul to Spokane. City of Spokane v. Nor. Pac. Ry. Co. 15 I. C. C. 376.
- SCHUIDEL OUTFIT.** Classification X-ray apparatus. Scheldel v. C. & N. W. Ry. Co. 11 I. C. C. 532.
- SCHOOL FURNITURE.** San Bernardino from Chicago. San Bernardino Board of Trade v. A. T. & S. F. Ry. Co. 4 I. C. C. 104.
- SCHOOL SLATES.** Boston and New York to Chattanooga, Tenn. Chattanooga Chamber of Commerce v. So. Ry. Co. 10 I. C. C. 111.
- SCOOPS.** Chicago and St. Paul to Spokane. City of Spokane v. Nor. Pac. Ry. Co. 15 I. C. C. 376.
- SCOURING COMPOUNDS.** Indianapolis to Ohio River crossings. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 15 I. C. C. 367.
- SCRAP IRON.** Cedar Rapids, Iowa, to Chicago, etc. Ohsman & Effron v. C. R. I. & P. Ry. Co. 12 I. C. C. 63.  
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- SCRAP LEATHER.** See LEATHER SCRAP.
- SCREEN DOORS.** Indianapolis to Ohio River crossings. Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co. 15 I. C. C. 367.
- SCREEN FRAMES.** See PLANING-MILL PRODUCTS.
- SCROLL WORK.** See PLANING-MILL PRODUCTS.

**SEA SHELLS.** Denver from Pacific coast. *Kindel v. A. T. & S. F. Ry. Co.* 9 I. C. C. 606.

**SEAL SKINS, SEA SHELLS.** Denver from Pacific coast. *Kindel v. A. T. & S. F. Ry. Co.* 9 I. C. C. 606.

**SEWING MACHINES.** San Bernardino from Chicago. *San Bernardino Board of Trade v. A. T. & S. F. Ry. Co.* 4 I. C. C. 104.

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**SHADES.** See WINDOW SHADES.

**SHEEP.** Arkansas to Memphis. *In re Freight Rates.* 11 I. C. C. 180.

**SHEEP SKINS.** Denver from Pac. Coast. *Kindel v. A. T. & S. F. Ry. Co.* 9 I. C. C. 606.

**SHEET IRON.** St. Louis to western points. *Business Men's League of St. Louis v. A. T. & S. F. Ry. Co.* 9 I. C. C. 318.

**SHEETING.** Atlantic coast to Denver. *Kindel v. B. & A. R. R. Co.* 11 I. C. C. 495.

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*Ashland, Tex., to Nash, Okla.* *Gentry v. A. T. & S. F. Ry. Co.* 13 I. C. C. 171.

*Bay City, Mich., to Buffalo, etc., N. Y.* *Michigan Box Co. v. F. & P. M. R. R. Co.* 6 I. C. C. 335.

*Lake City, Ark., to Springfield, Mo.* *Keich Mfg. Co. v. St. L. & S. F. R. R. Co.* 15 I. C. C. 230.

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*Pacific Northwest to East and South Pacific Coast Lumber Mfrs. Asso. v. Nor. Pac. Ry. Co.* 14 I. C. C. 23.

*Port Fairfield, Me., to Boston.* *James & Abbott v. Can. Pac. Ry. Co.* 5 I. C. C. 612.

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**SHOE DAUBERS.** Classification. *Derr Mfg. Co. v. Pa. R. R. Co.* 9 I. C. C. 646.

**SHOES AND BOOTS.** Chicago and St. Paul to Spokane. *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.

**SHOVELS.** See also AGRICULTURAL IMPLEMENTS.

*Chicago and St. Paul to Spokane.* *City of Spokane v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.

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**SLATS.** See **BED SLATS.**

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**SOAP.** Classification. *Andrews Soap Co. v. P. C. & St. L. Ry. Co.* 4 I. C. C. 41. *Beaver v. P. C. & St. L. Ry. Co.* 4 I. C. C. 733.

*Proctor & Gamble v. C. H. & D. Ry. Co.* 4 I. C. C. 87; 9 I. C. C. 440; 4 I. C. C. 443.

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**SPIKES.** Pueblo to San Francisco. *Colorado Fuel & Iron Co. v. So. Pac. Co.* 6 I. C. C. 488.

**SPINACH.** Charleston to northeastern points. *Truck Farmers Asso. of Charleston, S. C. v. N. E. R. R. Co. of S. C.* 6 I. C. C. 295.

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- STOVES.** Chicago and St. Paul to Spokane. City of Spokane *v. Nor. Pac. Ry. Co.* 15 I. C. C. 376.  
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Switching charge from industrial line to main line on all commodities except coal and coke. *Crane R. R. Co. v. P. & R. Ry. Co.* 248 (251).

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The Commission, in passing upon the reasonableness or unreasonableness of a rate, acts as an administrative body having quasi judicial functions. *Washer Grain Co. v. M. P. Ry. Co.* 147.

The Commission is an administrative body created to effect substantial justice in the matters under its control, and is not bound or limited by the strict rules of pleading. *Nollenberger v. M. P. Ry. Co.* 595 (598).

## ADMINISTRATIVE RULING.

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ADVANCE. See also *INDUSTRIAL RATES; PAST RATES*.

On castings, jappanned, results from conformance with a rule for the convenience of carriers in applying a general classification basis. This does not constitute a sound transportation reason for such marked differences in rates. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504.

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The Commission has no authority to prescribe a minimum rate. Kent Co. *v.* N. Y. C. & H. R. R. Co. 439 (442).

Sugar and coffee, Atlantic seaboard and New Orleans to Indianapolis. Indianapolis Freight Bureau *v.* P. R. R. Co. 567.

We have no authority to order an advance in rates. Kansas City Transportation Bureau *v.* A. T. & S. F. Ry. Co. 491 (497).

**ADVANCED CHARGES.**

The D. & R. G. advanced to the Mo. Pac. the full amount of its charges and collected same from consignee. These facts, together with other facts of record, constitute an arrangement which clearly brings the transportation within the scope of the act. Nollenberger *v.* M. P. Ry. Co. 595 (597).

**ADVANTAGE.**

The practice of supplying New York elevators enough grain to make up the weight of dirt, chaff, and moisture lost in the process of elevation is a practice affecting rates, in that it is an advantage or benefit that the shipper gets under the published rate. Baltimore Chamber of Commerce *v.* P. R. R. Co. 341.

**AGENT.**

Negligence of which deprives shipper of enjoyment of unlawful rate can not be made basis of claim for reparation. Folmer & Co. *v.* G. N. Ry. Co. 33.

Mistake of, in quoting less than correct rate; as law stands, no remedy before Commission. Whitcomb *v.* C. & N. W. Ry. Co. 27 (28).

Correct rate not quoted by initial carrier. Porter *v.* St. L. & S. F. R. R. Co. 1; Godfrey & Son *v.* T. A. & L. Ry. Co. 65 (66).

Forwarded shipment to connecting line contrary to shipper's instructions. Kile & Morgan Co. *v.* Deepwater Ry. Co. 235.

Of shipper, shipped contrary to instructions; Commission no authority to grant relief. Carstens Packing Co. *v.* O. S. L. R. R. Co. 429 (430).

**AGREED VALUATION.. See RELEASED RATES.****AGREEMENTS. See also CONTRACTS.**

Railroads should not be allowed to so divide and diversify themselves by contract and traffic agreements as to work a practical discrimination. Cedar Hill Coal & Coke Co. *v.* A. T. & S. F. Ry. Co. 73.

This Commission can not undertake by its orders to ratify the agreement of the parties as to past or future rates. Holley Matthews Man. Co. *v.* Y. & M. V. R. R. Co. 436 (437).

Cotton rate, Vincent, Ark., to Memphis, affected by conference between shippers and carriers. Barton, Reisinger, Davis Co. *v.* St. L. I. M. & S. Ry. Co. 222 (224).

**AGRICULTURAL MACHINERY.** See **COMMODITIES**.

**ALLOWANCE.** See **CAR STAKES**; **ELEVATOR ALLOWANCES**; **SWITCHING CHARGE**.

**ALL-RAIL.** See **EX-RIVER COAL**.

**AMMUNITION.** See **COMMODITIES**.

**ANTI-TRUST.**

While evidence of unlawful combinations is admissible as part of the history of the rate, the unlawful combination, standing by itself, is not a sufficient ground for reducing the rate. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453.

**ANY-QUANTITY RATE.**

One of benefits of is that it leaves carrier with some freedom in use of its equipment. Even if larger car had been available, carrier not bound to give it for shipment carrying an "any-quantity rate." *Falls & Co. v. C. R. I. & P. Ry. Co.* 269 (272).

**APPEARANCE.**

Generally speaking, where complainant does not appear at the hearing and his absence is not explained the case should be dismissed on the ground that it is presumably abandoned. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (600).

Complainant failed to appear at hearing, and complaint dismissed for want of prosecution. *Maxwell v. Adams Express Co.* 609.

An order of dismissal should be entered, the complainant not having appeared at the hearing. *Taylor v. M. P. Ry. Co.* 165 (166).

Complaint dismissed, complainant failing to appear at hearing. *Pleasant Hill Lumber Co. v. St. L. S. W. Ry. Co.* 532.

Petition dismissed because of failure of complainant to appear. *Wakita Coal & Lumber Co. v. A. T. & S. F. Ry. Co.* 533.

By attorney for complainant only. *Keich Manufacturing Co. v. St. L. & S. F. R. R. Co.* 230.

**ARBITRARY.**

Joint through rate on brick from Collinsville, Ill., to Galveston, Tex., constructed by adding arbitrary of 5 cents to through rate of 22 cents from St. Louis. *Hydraulic Press Brick Co. v. Vandalia R. R. Co.* 175.

Class rates from Chicago to Spokane are made higher than those from St. Paul by certain arbitraries. *City of Spokane v. N. P. Ry. Co.* 376 (377).

Bridge, Vincent, Ark., to Memphis, deducted from rate. *Barton, Reisinger, Davis Co. v. St. L. I. M. & S. Ry. Co.* 222.

**ARRANGEMENT.**

The D. & R. G. advanced to the Mo. Pac. the full amount of its charges and collected same from consignee. These facts, together with other facts of record, constitute an arrangement which clearly brings the transportation within the scope of the act. *Nollenberger v. M. P. Ry. Co.* 595 (597).

**ARTIFICIAL ICE.**

Competing with natural ice. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (311).

**ATTORNEY'S FEES.**

Section 8 only contemplates damages and attorneys' fees to be recovered in a suit at law. *Washer Grain Co. v. M. P. Ry. Co.* 147 (152).

**AUTHORITY.** See also **JURISDICTION**; **POWER OF COMMISSION**.

It is clear that the Commission, whose authority is in the nature of an extraordinary remedy, is not authorized to adjudicate the claim of a railroad company against a shipper, but only the claim of a shipper against a railroad company for violation of the interstate commerce law. *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37 (38).

**AUTOMOBILES.** See **COMMODITIES.**

**BACK HAUL.**

Defendants can not be required to perform this back haul free of charge and its present tariff rates for back hauls and out-of-line service are not unreasonable. *Celina Mill & Elevator Co. v. S. L. S. W. Ry. Co.* 138.

Rate on cross-ties from Sault Ste. Marie to Thiensville, Wis., should not exceed combination on Milwaukee, a farther distant point. *MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329 (330).

Application of commodity rates, Rochester to Pacific Coast Terminals, back to Western Classification territory on locals, netted good profit. *Yawman & Erbe Manufacturing Co. v. A. T. & S. F. Ry. Co.* 260 (262).

Whatever distance may be in favor of Eufaula results naturally from the fact that the transportation from Bainbridge is in the nature of a back haul. *Bainbridge Board of Trade v. L. H. & St. L. Ry. Co.* 586 (590).

No rate to an intermediate point can reasonably be higher than the sum of the terminal rate plus the local rate back. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (536).

Iron pyrites, Atlantic ports to Buffalo, takes lower rate than return haul of pyrites cinder from Buffalo to points in Pennsylvania and New Jersey. *Naylor & Co. v. L. V. R. R. Co.* 9 (10).

With the great bulk of commodities the Spokane rate exceeds materially the Seattle rate, but not by the full local back. *City of Spokane v. N. P. Ry. Co.* 376 (382).

**BAGS, BURLAP AND PAPER.** See **COMMODITIES.**

**BAILMENT.**

Practice of making scalage deductions based on estimated weights does not present a question of rates; it is a question of bailment only. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341 (346).

**BALL CARTRIDGES.** See **COMMODITIES.**

**BANANAS.** See **COMMODITIES.**

**BARLEY.** See **COMMODITIES.**

**BASING LINE.**

Rates made up on combination on a closely adhered to basing line must be made with regard to the cost of the terminal services, which is necessarily high. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (558).

**BASING RATE.** See also **BACK HAUL.**

Rate on emigrant outfits, Fletcher, Okla., to Bovina, Tex., reached by basing on Quanah and applying joint distance rates to destination. *Porter v. St. L. & S. F. R. R. Co.* 1 (6).

No rate to an intermediate point can reasonably be higher than the sum of the terminal rate plus the local rate back. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (536).

**BEANS.** See **COMMODITIES.**

**BEDS.** See **COMMODITIES.**

**BEER.** See **COMMODITIES.**

**BELTING.** See **COMMODITIES.**

**"BETWEEN."**

Tariffs reading "between" are always understood to apply in either direction. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (600).

**BICYCLES.** See **COMMODITIES.**

**BILL OF LADING.**

The bananas are not moved under any through bill of lading. No ship's manifest is issued for them. They are brought to New Orleans in ships that are owned by the grower and owner of the bananas. Upon arrival at New Orleans the bananas pass to the custody and possession of a selling agency which distributes them under and upon local bills of lading. *Payne v. M. L. & T. R. R. & S. S. Co.* 185.

A provision in a bill of lading being outside the tariff announcement was in no sense a limitation upon the right of the shipper to have his commodity transported in the manner and at the rate specified in the rate schedule. *Woodward & Dickerson v. L. & N. R. R. Co.* 170 (172).

The bill of lading should plainly state the liability assumed. Any other course of business will inevitably result in giving the shipper in many cases a defective contract. *Wyman, Partridge & Co. v. B. & M. R. R.* 577 (582).

Should be issued for return of empty cream cans. *Fairmont Creamery Co. v. Pacific Express Co.* 134.

**BITUMINOUS COAL.** See **COMMODITIES.**

**BLANK BOOKS.** See **COMMODITIES.**

**BOILERS.** See **COMMODITIES.**

**BOOKS.** See **COMMODITIES.**

**BOOTS AND SHOES.** See **COMMODITIES.**

**BOTH DIRECTIONS.**

Tariffs reading "between" are always understood to apply in either direction.

*Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (600).

**BOX SHOOKS.** See **COMMODITIES.**

**BOXES.** See **COMMODITIES.**

**BOYCOTT.**

Failure of roads to accord promised rates to jobbers of Spokane led to boycott, the outcome being an understanding that Spokane was to be accorded a certain defined territory. *City of Spokane v. N. P. Ry. Co.* 376 (390).

**BRANCH LINES.**

There is a material difference between a reasonable amount to be added for additional mileage on a straight-away long haul and a reasonable allowance to be added for an out-of-line haul which involves two and probably three terminal services. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491 (495).

**BREWERS' RICE.** See **COMMODITIES.**

**BRICK.** See **COMMODITIES.**

**BRIDGE ARBITRARY.** See **ARBITRARY.**

**BROOM CORN.** See **COMMODITIES.**

**BUGGIES.** See **COMMODITIES.**

**BUILDING PAPER.** See **COMMODITIES.**

**BUNCHING CARS.**

There is nothing unreasonable or unlawful about a tariff rule which provides that in the event of the carrier's bunching a shipper's cars and delivering them in excess of the shipper's facilities and ability to load or unload demurrage will not accrue. *American Creosoting Works v. Ill. Cent. R. R. Co.* 160.

**BURDEN OF PROOF.**

There are instances in which the circumstances might justify the higher through rate, and it is for the carrier to demonstrate their potency in the establishment of a through rate that exceeds the sum of the locals. *Michigan Buggy Co. v. G. R. & I. Ry. Co.* 297 (299).

**BURDEN OF PROOF**—Continued.

Where complainant sought to disturb a rate adjustment of long standing, he should take upon himself the burden of establishing clearly the necessity for an investigation and the reasonableness of its demand. *Taylor v. M. P. Ry. Co.* 165 (166).

We take it that the burden is upon the carrier against whom a charge of misrouting is made to show that it applied the lawful rate. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 627 (630).

**BURLAPS.** See **COMMODITIES**.

**BUTTER AND EGGS.** See **COMMODITIES**.

**BY-PRODUCT.**

Chaff, dust, dirt, etc., of grain lost during elevation, though sold at Chicago and St. Louis, is of no value as a by-product. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341 (343).

Higher grade commodity for longer haul charged less than return movement of by-product for shorter haul. *Naylor & Co. v. L. V. R. R. Co.* 9 (10).

**CANNED GOODS.** See **COMMODITIES**.

**CANNEL COAL.** See **COMMODITIES**.

**CANS, EMPTY.** See **COMMODITIES**.

**CANVAS.** See **COMMODITIES**.

**CAPACITY.** See **CAR SIZE**; **MARKED CAPACITY**.

**CAPE HORN.**

In the past that route carrying the largest amount of traffic and producing the greatest effect upon transcontinental rates has been the regular service around Cape Horn or through the Straits. *City of Spokane v. N. P. Ry. Co.* 376 (384).

**CAPITALIZATION.**

Upon an examination of the history of these properties, the cost of reproducing them at the present time, the original cost of construction, the present capitalization, and the manner in which that capitalization has been made; *Held*, That the earnings of both the Great Northern and the Northern Pacific in recent years have been excessive. *City of Spokane v. N. P. Ry. Co.* 376.

**CARS.** See **FOREIGN CARS**.

**CAR DISTRIBUTION.**

It is the duty of the carrier to accommodate the needs and necessities of shippers in regard to supplying cars; it is not possible for carriers to furnish all shippers with just such cars as they would like and in such numbers and at such days and hours as would best serve their interests. *American Creosoting Works v. Ill. Cent. R. R. Co.* 160.

**CAR FITTING.** See **CAR STAKES**.

**C. L. AND L. C. L.**

As a rule, shippers prefer to pay the carload rate on a higher minimum than can be loaded, rather than ship less-than-carload quantities mixed with the property of other shippers. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504 (525).

Water competition may justify a difference in carload minimums and in the right to combine different commodities at the carload rate. *City of Spokane v. N. P. Ry. Co.* 376.

**CAR RENTAL.**

Per diem paid by Union Pacific to Burlington for use of its cars as long as they remain in possession. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (97).

**CAR SERVICE.** See **DEMURRAGE**.

**CAR SIZE.**

Tariff named rate on 36½-foot car; car furnished 34 feet. Tariff amended to provide that when cars less than 36 feet are furnished for carrier's convenience a reduction of 3½ per cent per foot will be made from rates; *Held*, That tariff prior to amendment was unreasonable. *Carstens Packing Co. v. N. P. Ry. Co.* 431.

If, upon reasonable demand, carrier can not supply car of size ordered, it is its duty to accept shipment and move it in any available car, applying rate on basis of marked capacity of car ordered. *General Chemical Co. v. N. & W. Ry. Co.* 349.

Under a local any-quantity rate a shipper has no right to demand a car of a given size. *Falls & Co. v. C. R. I. & P. Ry. Co.* 269.

**CAR STAKES.**

Reparation allowed for failure to make allowance for weight of stakes. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 192.

Tariff contained no provision for, but subsequent amendment provided for an allowance. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 627.

**CARPETS.** See **COMMODITIES.**

**CARRIERS' DUTY.**

Commission without authority to enforce compliance by carriers with any duties except those prescribed by the act; for the enforcement of duties not so prescribed appropriate remedy must be sought in courts. *Royal Brewing Co. v. Adams Express Co.* 255 (256).

It is the duty of a common carrier to receive and carry, upon reasonable terms, all goods tendered in suitable condition, and it can not lawfully discriminate in favor of any person, product, or locality. *Standard Lime & Stone Co. v. Cumberland Valley R. R. Co.* 620.

While carrier in accepting shipment ought to consider the convenience and interests of the shipper, nevertheless, as a matter of law, it is under an obligation only of satisfying the requirements of its own tariffs. *Falls & Co. v. C. R. I. & P. Ry. Co.* 269 (272).

To transport the merchandise of shippers in accordance with their reasonable instructions. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (464).

The prompt and safe carriage of goods is an obligation enforced upon carriers by the common law and not by the act to regulate commerce. *Blume & Co. v. Wells, Fargo & Co.* 53.

It is the duty of the carrier to transport for all without undue discrimination or preference. *National Petroleum Assn. v. L. & N. R. R. Co.* 473 (476).

**CARTRIDGES.** See **COMMODITIES.**

**CASTINGS, JAPANNED.** See **COMMODITIES.**

**CATTLE.** See **COMMODITIES.**

**CAUSE OF ACTION.** See **LIMITATION.**

**CEDAR INSULATOR PINS.** See **COMMODITIES.**

**CEMENT.** See **COMMODITIES.**

**CENTRALIZERS.**

Complainants are engaged in the operation of creameries and using the centralizer method, whereby supplies of cream are obtained by railroad, as distinguished from the local creamery method which obtains cream by wagon. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109.

**CEREAL FOODS.** See **COMMODITIES.**



## CERTIFICATES.

Against ore lands formerly owned by G. N. Ry. Co. can not be properly considered in determining what are reasonable earnings at the present day. *City of Spokane v. N. P. Ry. Co.* 376.

Issued for grain delivered to elevators, showing scalage deductions for loss in weight during elevation. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341.

## CHAIRS. See COMMODITIES.

## "CHARITABLE," AND "ELEMOSYNARY."

Courts have been consistently liberal in giving construction to. *In re Passes to Clergymen, etc.* 45 (46).

## CHARTERS.

All local regulations, private contracts, terms of franchises, or charters, must give way when they conflict with federal regulation duly prescribed by the Congress. *American Bankers' Assn. v. American Express Co.* 15 (21).

## CIRCUMSTANCES AND CONDITIONS.

When unjust discrimination against one point in favor of another is alleged, it must be shown that the circumstances and conditions at each of the points are substantially similar, and that the lower rates at the one point are the result of the voluntary action of the carriers at that point. *Bainbridge Board of Trade v. L. H. & St. L. Ry. Co.* 586 (593).

Surrounding transportation of flour through Chicago from Minneapolis to the seaboard for export or domestic consumption are substantially dissimilar to those surrounding traffic through Chicago from Missouri River points. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

The dissimilarity in the conditions affecting express traffic to Fall River and Bristol Ferry explains and justifies the relation of the defendant's rates to the two points. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631.

Contention that the coal rate, Appalachia to Bristol, Tenn., is discriminatory as compared with the rates from Middlesboro to Knoxville is not sustained, as the circumstances are not similar. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453.

There are instances in which they might justify the higher through rate, and it is for the carrier to demonstrate their potency in the establishment of a through rate that exceeds the sum of the locals. *Michigan Buggy Co. v. G. R. & I. Ry. Co.* 297 (299).

Where the same carrier serves two districts which are in substantially similar circumstances and conditions the serving carrier can not lawfully prefer one to the other in any manner whatsoever. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286.

Dissimilarity in, at Milwaukee, justify lower rates from Sault Ste. Marie, Mich., on cross-ties, than to Thiensville, intermediate. *MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329.

Dissimilarity in, surrounding traffic to Chattanooga from Middlesboro, Ky., that justifies a lower rate to that point than to Bristol. *Board of Mayor & Aldermen v. So. Ry. Co.* 487.

Competition with short intrastate line. *Paola Refining Co. v. M. K. & T. Ry. Co.* 29.

Difference created in, by water competition. *City of Spokane v. N. P. Ry. Co.* 376.

## CLAIMS.

Commission ought not to be annoyed with formal complaints involving an insignificant amount when no principle is at stake. *Lindsay Bros. v. L. S. & M. S. Ry. Co.* 284 (285).

## CLASS AND COMMODITY RATES.

Class rates are established from St. Paul to Spokane less than those now in effect, and from Chicago higher than from St. Paul by arbitraries. On all commodities except 5, the rate from Chicago to Seattle is established as a local rate from St. Paul to Spokane. *City of Spokane v. N. P. Ry. Co.* 376 (377).

Class rates charged by defendants subsequent to June 30, 1907, for the transportation of hay from Kansas City, Mo., to Mississippi River points and points east found unjust and unreasonable. These rates ought not to have exceeded the proportional commodity rates in effect prior to said date. *North Bros. v. C. M. & St. P. Ry. Co.* 70.

Complainant asks that the higher commodity proportionals to the Ohio River crossings be canceled in order that the lower class proportionals may apply; *Held*, the order prayed for is not warranted. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 367.

Defendants ordered to establish and maintain for the transportation of coal-tar paving cement from Ensley, Ala., to Lagrange, Ga., the same classification and commodity rates that are in force at the same time on coal-tar pitch. *Barrett Mfg. Co. v. L. & N. R. R. Co.* 196.

Commodity rates are almost invariably lower than class rates, being special rates presumably established on account of peculiar circumstances and conditions. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 367 (369).

Class rates, Indianapolis to Ohio River points and Chicago compared with rates between Chicago and the Ohio River. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504 (505).

Class rate on eggs, Leslie, Ark., to Chicago, reduced by establishment of special commodity rate on dairy products. *Mose Smith & Co. v. Mo. & N. Ark. R. R. Co.* 449.

Class rate on clay conduit, Brazil, Ind., to Racine, Wis., exceeded commodity rate to Milwaukee, a longer distant point. *Milwaukee Electric Ry. & L. Co. v. C. M. & St. P. Ry. Co.* 468.

Scrap iron, Douglas, Ariz., to El Paso, Tex., unreasonable class rate applied in absence of commodity rate. *Darbyshire-Harvie Iron & Machine Co. v. El P. & S. W. R. R. Co.* 451.

Through fifth-class rate on stoves, Minneapolis, via Chicago, to Fremont, Ohio, found unreasonable. *Hartman Furniture & Carpet Co. v. Wis. Cent. Ry. Co.* 530.

Canned goods, Atlanta, Tex., to Kansas City and Chicago; class rate voluntarily reduced to basis of commodity rate. *Godfrey & Son v. T. A. & L. Ry. Co.* 65.

Missouri River and east thereof to Denver, and from Denver to Utah common points. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555.

Naming of commodity rate on any article of traffic takes such article out of classification. *Porter v. St. L. & S. F. R. R. Co.* 1 (5).

Mixed carloads of buggies and wagons, East St. Louis, Ill., to Beebe, Ark. *Parlin & Orendorff v. St. L. I. M. & S. Ry. Co.* 145.

Eastern Territory to Green Bay, Wis. *Green Bay Business Men's Assn. v. B. & O. R. R. Co.* 59.

St. Louis, etc., to Monroe, La. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534.

St. Louis to Eufaula, Ala., and Bainbridge, Ga. *Bainbridge Board of Trade v. L. H. & St. L. Ry. Co.* 586.

## CLASSIFICATION.

The complaint is that the charge of one and one-half times first-class rates on rapid roller letter copiers is unreasonable; *Held*, the evidence does not show that the rates resulting from the classification are unreasonable. *Yawman & Erbe Manufacturing Co. v. A. T. & S. F. Ry. Co.* 260.

## CLASSIFICATION—Continued.

Classification of new and old automobiles in same class not found, under the circumstances, unjust, as no definite line can be drawn between old and new machines of different value. *Whitcomb v. C. & N. W. Ry. Co.* 27.

We can not order change in rule of, except as it applies to the defendant. *Bennett v. M. St. P. & S. Ste. Marie Ry. Co.* 301 (303).

Coal-tar paving cement compared with coal-tar pitch. *Barrett Man. Co. v. L. & N. R. R. Co.* 196.

Jewelers' sweepings in Western Classification. *Rentz Bros. v. C. B. & Q. R. R. Co.* 7.

Sewing-machine stand castings. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504.

Canvas, old and worn-out, should be classed as junk. *Channon Co. v. L. S. & M. S. Ry. Co.* 551.

CLAY CONDUIT. See **COMMODITIES**.

CLERGYMAN. See **MINISTER**.

CLOSING OFFICE. See **OFFICE CLOSING**.

COAL. See **COMMODITIES**.

COAL OIL. See **COMMODITIES**.

COAL-TAR PAVING CEMENT. See **COMMODITIES**.

COFFEE. See **COMMODITIES**.

C. O. D.

In view of the practical difficulties attending the "C. O. D." carriage of intoxicating liquors, the discrimination against that traffic resulting from defendants' refusal to perform that service is not undue. *Royal Brewing Co. v. Adams Express Co.* 255.

COMBINATIONS. See **ANTI-TRUST**.

## COMBINATION RATES.

If no specific rate from point of origin to destination of a through shipment is provided and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment. *Porter v. St. L. & S. F. R. R. Co.* 1 (4).

Although one of the factors in the combination was not on file with the Commission, and hence was not lawfully applicable on interstate shipments, it was a combination of locals which could have been used if the transportation wholly within the State of Texas had been separated from the transportation from Orange, Tex., to Crowley, La. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (601).

Through routes with milling-in-transit privilege from wheat-producing district of Oklahoma to Texas points established by using junction that makes shortest reasonable route to particular destination. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138 (144).

Rates from the north to Monroe can not reasonably exceed in any instance the combination on Vicksburg or New Orleans, whichever may make lower. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534.

Rates made up on combination on a closely adhered to basing line must be made with regard to the cost of the terminal services, which is necessarily high. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (558).

Shipment of poles, Laporte, Minn., to Poplar Bluff, Mo., via Kansas City and St. Louis; misrouted. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 627.

New York to Spokane based on Chicago. *City of Spokane v. N. P. Ry. Co.* 376.

Lumber, Fostoria, Tex., to Melrose, N. Mex., based on Texico. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 56 (57).

COMMERCIAL CENTER. See BASING RATE; TRADE CENTER.

# COMMODITIES.

- Agricultural implements, East St. Louis to Bæbe, Ark. 145.
- Agricultural machinery, Bancroft, Tex., to Crowley, La. 599.
- Ammunition, Norfolk, Va., to Annapolis, Md. 234.
- Automobiles, Beatrice, Nebr., to Kenosha, Wis. 27.
- Bags, burlap, Chicago and Indianapolis to St. Louis, 504.
- Bags, burlap, New York to Chicago, 439.
- Bags, paper, Chicago and St. Paul to Spokane, 376.
- Ball cartridges, Norfolk, Va., to Annapolis, Md. 233.
- Bananas, New Orleans, La., to El Paso, Tex. 185.
- Barley, St. Louis, Mo., to Bainbridge, Ga. 586.
- Barley, scalage deductions, elevators at Baltimore, 341.
- Barley, to Milwaukee and Chicago from various points, 460.
- Beans, Lansing, Mich., to Cedar Rapids, Iowa, 616.
- Beans, canned, Chicago and St. Paul to Spokane, 376.
- Beds, iron, Chicago and Indianapolis to St. Louis, 504.
- Beer, Milwaukee, Wis., to Roswell, N. Mex. 178.
- Beer, St. Louis, Mo., to Leadville, Colo. 595.
- Belting, Chicago and St. Paul to Spokane, 376.
- Bicycles, Chicago and St. Paul to Spokane, 376.
- Bituminous coal, Appalachia coal field in Virginia to Bristol, Tenn. 453.
- Bituminous coal, Grafton, W. Va., via Willow Creek, Ind., to Kalamazoo, Mich. 11.
- Bituminous coal, Middlesboro, Ky., to Bristol, Tenn. 487.
- Blank books, Chicago and St. Paul to Spokane, 376.
- Boilers, Kalamazoo, Mich., to New Glarus, South Wayne, Monticello and Monroe, Wis. 40.
- Boilers, Kalamazoo, Mich., to Woodford and Argyle, Wis. 182.
- Books, Chicago and St. Paul to Spokane, 376.
- Books, blank, Chicago and St. Paul to Spokane, 376.
- Boots and shoes, Chicago and St. Paul to Spokane, 376.
- Box shooks, Greenville, Miss., to Cedar Rapids, Iowa, 436.
- Boxes, tin, Chicago and St. Paul to Spokane, 376.
- Brewers' rice, free time at New Orleans, 280.
- Brick, Collinsville, Ill., to Galveston, Tex. 175.
- Brick, fire, Joliet, Ill., to Milwaukee, Wis. 480.
- Broom corn, Duncan, Okla., to Seattle, Wash. 219.
- Buggies, East St. Louis, Ill., to Beebe, Ark. 145.
- Building paper, Ensley, Ala., to Lagrange, Ga. 196.
- Bullion. See Jewellers' sweepings.
- Burlap bags, Chicago and Indianapolis to St. Louis, 504.
- Burlap bags, New York to Chicago, 439.
- Butter and eggs, Granite Falls, Minn., to Chicago, Ill. 334.
- Canned beans, Chicago and St. Paul to Spokane, 376.
- Canned corn, Chicago and St. Paul to Spokane, 376.
- Canned goods, Chicago and Indianapolis to St. Louis, 504.
- Canned goods, Indianapolis to Ohio River crossings, 367.
- Canned goods, St. Louis, Mo., to Bainbridge, Ga. 586.
- Canned peaches, Atlanta, Tex., to Kansas City and Chicago, 65.
- Canned peas, Chicago and St. Paul to Spokane, 376.
- Cannel coal, claims for reparation under former order, 553.
- Cans, cream, empty, return to Omaha, 134.
- Canvas, old, Worcester, Mass., to Chicago, Ill. 551.
- Car fittings. See Stakes.

## COMMODITIES—Continued.

- Carpets, Chicago and St. Paul to Spokane, 376.  
Cartridges, ball, Norfolk, Va., to Annapolis, Md. 233.  
Castings, japanned, classification, 504.  
Cattle, Anaconda, Mont., to Tacoma, Wash. 431, 432.  
Cattle, Nampa, Idaho, to Tacoma, Wash. 429.  
Cattle, Ontario, Oreg., and Nampa, Idaho, to Tacoma, Wash. 482.  
Cedar insulator pins, Marble Falls, Tex., to St. Louis, 167.  
Cement, coal-tar, classification, Ensley, Ala., to Lagrange, Ga. 196.  
Cereal foods, St. Louis, Mo., to Bainbridge, Ga. 586.  
Chairs, Chicago and Indianapolis to St. Louis, 504.  
Class and commodity rates, Chicago and St. Paul to Spokane, 376.  
Class and commodity rates, eastern territory to Green Bay, Wis. 59.  
Class and commodity rates, Indianapolis to Ohio River crossings, 367.  
Class and commodity rates, New York, etc., to Denver and Denver to Salt Lake City, 555.  
Class and commodity rates, St. Louis, Mo., to Bainbridge, Ga. 586.  
Class and commodity rates, St. Louis, etc., to Monroe, La. 534.  
Class rates, Kansas City, Mo., to Mississippi River points, etc. 70.  
Clay conduits, Brazil, Ind., to Racine, Wis. 468.  
Coal, Appalachia, Va., to Bristol, Tenn. 453.  
Coal, Black Mountain coal district, Va., to Morristown, Tenn., and all points east and south thereof, 286.  
Coal, Gallup, N. Mex., to El Paso, Tex. 443.  
Coal, Grafton, W. Va., via Willow Creek, Ind., to Kalamazoo, Mich. 11.  
Coal, Ludlow, Colo., to Trinidad, Colo., divisions of through rate beyond, 73.  
Coal, Middlesboro, Ky., to Bristol, Tenn. 487.  
Coal, reconsignment charge, from Greenville mine, near Ludlow, Colo., to various points, 546.  
Coal, cannel, claims for reparation under former order, 553.  
Coal oil, receipt of L. C. L. shipments, 473.  
Coal-tar cement, classification, Ensley, Ala., to Lagrange, Ga. 196.  
Coffee, New Orleans and Atlantic seaboard points to Indianapolis, St. Louis, and the Ohio River crossings, 567.  
Coffee, St. Louis, Mo., to Bainbridge, Ga. 586.  
Commodity rates, St. Louis, Mo., to Bainbridge, Ga. 586.  
Conduits, clay, Brazil, Ind., to Racine, Wis. 468.  
Copiers. See Letter copiers.  
Cordage and twine, Chicago and St. Paul to Spokane, 376.  
Corn, Celina, Ohio, to Johnstown, Pa. 107.  
Corn, Humboldt, Nebr., to St. Francis, Kans. 324.  
Corn, Pawnee, Nebr., to St. Francis and Atwood, Kans. 324.  
Corn, St. Louis, Mo., to Bainbridge, Ga. 586.  
Corn, scaleage deductions, elevators at Baltimore, 341.  
Corn, to Milwaukee from points on Rock Island R. R. 460.  
Corn, canned, Chicago and St. Paul to Spokane, 376.  
Cotton, Vincent, Ark., to Memphis, Tenn. 222.  
Cotton and rubber belting, Chicago and St. Paul to Spokane, 376.  
Cotton duck, Chicago and St. Paul to Spokane, 376.  
Cotton fabrics, Indianapolis to Ohio River crossings, 367.  
Cotton linters, Malden, Mo., to Minneapolis, Minn. 269.  
Cotton linters, Meridian, Miss., to New Orleans, La. 332.  
Cotton piece goods, Chicago and Indianapolis to St. Louis, 504.  
Couches, metal, Chicago and Indianapolis to St. Louis, 504.

## COMMODITIES—Continued.

- Creamery rates, Chicago between Detroit and Port Huron, 109.  
 Creamery rates, to Omaha, 134.  
 Creosoted lumber, New Orleans, La., to points in Texas, Arizona, and Mexico, 160.  
 Cross-ties, Sault Ste. Marie, Mich., to Thiensville, Wis. 329.  
 Cutters, Kalamazoo, Mich., to St. Paul, Minn. 297.  
 Dairy products, Leslie, Ark., to Chicago, 449.  
 Dairy products. See Butter and eggs.  
 Denims, Chicago and St. Paul to Spokane, 376.  
 Domestic coal, Appalachia coal field in Virginia, to Bristol, Tenn. 453.  
 Domestic grain, Missouri River points to Atlantic seaboard, 351.  
 Doors, Dubuque, Iowa, to Sioux Falls, S. Dak. 602.  
 Doors, screen, Indianapolis to Ohio River crossings, 367.  
 Drafts. See Money orders.  
 Drugs, Chicago and St. Paul to Spokane, 376.  
 Dry goods, Indianapolis to Ohio River crossings, 367.  
 Dry kiln outfit, Central and Trunk Line territories, 370.  
 Eggs, Leslie, Ark., to Chicago, Ill. 449.  
 Eggs and butter, Granite Falls, Minn., to Chicago, Ill. 334.  
 Elevator allowances, Atchison, Kans. 147.  
 Elevator allowances, Omaha and Council Bluffs, 90.  
 Emigrant's movables, La Harpe, Ill., to Boulder, Colo. 543.  
 Emigrant's outfit, Fletcher, Okla., to Bovina, Texas, 1.  
 Empty cream cans, return to Omaha, 134.  
 Engines, Kalamazoo, Mich., to Woodford and Argyle, Wis. 182.  
 Feed, Missouri River to Atlantic seaboard, 351.  
 Fertilizer, Montgomery, Ala., to points on the M. J. & K. C. R. R. Co., north of Newton, Miss. 199.  
 Fertilizer. See Phosphate rock.  
 Fire brick, Joliet, Ill., to Milwaukee, Wis. 480.  
 Flaxseed, Britton, S. Dak., to Red Wing, Minn. 47.  
 Flour, Indianapolis to Ohio River crossings, 367.  
 Flour, Missouri River points to Atlantic seaboard, 351.  
 Flour, St. Louis, Mo., to Bainbridge, Ga. 586.  
 Foreign money. See Money orders.  
 Fresh meats, Indianapolis to Cleveland, Ohio., etc. 504.  
 Fruit, delivery at Pittsburg, Pa. 53.  
 Fruit jars, Chicago and St. Paul to Spokane, 376.  
 Fruit jars, Indianapolis to Ohio River crossings, 367.  
 Fuel wood. See Emigrant's movables.  
 Furniture, Chicago and Indianapolis to St. Louis, 504.  
 Glass, common and window, Chicago and St. Paul to Spokane, 376.  
 Glass, plate, Indianapolis to Ohio River crossings, 367.  
 Glass, plate, St. Paul, Minn., to Douglas, N. Dak. 301.  
 Glass, skylight, Indianapolis to Ohio River crossings, 367.  
 Glass, window, Indianapolis to Ohio River crossings, 367.  
 Glassware, Chicago and St. Paul to Spokane, 376.  
 Glassware, St. Louis, Mo., to Bainbridge, Ga. 586.  
 Grain, elevation at Omaha and Council Bluffs, 90.  
 Grain, Kansas City, 491.  
 Grain, scalage deductions, elevators at Baltimore, Md. 341.  
 Grain, to Milwaukee, from various points, 460.  
 Grain and products, Kansas City S. W. Ry. points to various other points, 610.  
 Grain and products, Kansas points to Memphis, Tenn., and Little Rock Ark. 605.

## COMMODITIES—Continued.

- Grain and products, Kansas points to Oklahoma points, 607.
- Grain and products, St. Louis, Mo., to Bainbridge, Ga. 586.
- Grain products, Missouri River points to Atlantic seaboard, 351.
- Groceries, St. Louis, Mo., to Bainbridge, Ga. 586.
- Hardware, classification, 504.
- Hardware, St. Louis, Mo., to Bainbridge, Ga. 586.
- Hay, Kansas City, Mo., to Mississippi River points and points east, 70.
- Hay, switching charges, Kansas City, Mo. 37.
- Heaters, Chicago and St. Paul to Spokane, 376.
- Hides, Indianapolis to Ohio River crossings, 367.
- Hogs. See Emigrant's outfit.
- Horses. See Emigrant's outfit.
- Household goods. See Emigrant's outfit.
- Ice, New Jersey and Pennsylvania to various destinations, 305.
- Inflammable oils, receipt and shipments of L. C. L. lots, 473.
- Intoxicating liquors. See Liquors.
- Insulator pins, cedar, Marble Falls, Tex., to St. Louis, Mo. 167.
- Insurance, marine, on the Great Lakes, 577.
- Iron and steel, Chicago and Indianapolis to St. Louis, 504.
- Iron articles, Indianapolis to Ohio River crossings, 367.
- Iron bars, East Chicago, Ind., to Moline, Ill. 277.
- Iron beds, Chicago and Indianapolis to St. Louis, 504.
- Iron ore, Buffalo, N. Y., to points in Pennsylvania and New Jersey, 9.
- Iron, scrap, Douglas, Ariz., to El Paso, Tex. 451.
- Iron, scrap, Freeport, Ill., to Wheatland, Pa. 478.
- Iron, structural, fabrication of, at Indianapolis, 370.
- Iron, sulphide of, Pulaski, Va., to Edgewater, N. J. 349.
- Jars, fruit, Chicago and St. Paul to Spokane, 376.
- Jewelers' sweepings, Minnesota points to Rhode Island, 7.
- Junk, old canvas, Worcester, Mass., to Chicago, Ill. 551.
- Kraut, Chicago and Indianapolis to St. Louis, 504.
- Ladders, Chicago and Indianapolis to St. Louis, 504.
- Ladders, official classification, 370.
- Lard, Indianapolis to Ohio River crossings, 367.
- Lard pails, Chicago and St. Paul to Spokane, 376.
- Leaf tobacco. See Tobacco.
- Letter, copiers, Western Classification territory, 260.
- Letters of credit. See Money orders.
- Lime, Bunker Hill and Martinsburg, W. Va., to Philadelphia, Pa., and other points, 620.
- Limestone, Bunker Hill and Martinsburg, W. Va., to Philadelphia, Pa., and other points, 620.
- Liquors, refusal to accept shipments C. O. D. 255.
- Live stock. See Emigrant's outfit.
- Lumber. See also Box shooks; Cedar insulator pins; Shingles; Tent pins.
- Lumber, Ashland, Tex., to Wakita, Okla. 533.
- Lumber, Atkins, Ark., to Briggs, Okla. 165.
- Lumber, Fostoria, Tex., to Melrose, N. Mex. 56.
- Lumber, Harper, W. Va., to New Haven, Conn. 235.
- Lumber, Lake Charles, La., to El Paso, Tex. 49.
- Lumber, Mississippi and other states to eastern points, 239.
- Lumber, Omaha, Nebr., to Canton, S. Dak. 277.
- Lumber, San Pedro, Cal., to Los Angeles, Cal. 434.
- Lumber, Warsaw, N. C., to Chappaqua, N. Y. 501.

## COMMODITIES—Continued.

- Lumber, Wisconsin to Illinois and Iowa, 427.  
 Lumber, creosoted, New Orleans, La., to points in Texas, Arizona, and Mexico, 160.  
 Machinery. See Agricultural machinery.  
 Machinery, paper mill, Pittsfield, Mass., to Millinocket, Me. 226.  
 Machinery, sawmill, Ogemaw, Ark., to Sodus, La. 532.  
 Marine insurance. See Insurance.  
 Mattresses, wire, Chicago and Indianapolis to St. Louis, 504.  
 Meat, Indianapolis to Ohio River crossings, 367.  
 Meats, fresh, Indianapolis to Cleveland, Ohio, etc. 504.  
 Meats, salt, St. Louis, Mo., to Bainbridge, Ga. 586.  
 Medicines, Chicago and St. Paul to Spokane, 376.  
 Metal couches, Chicago and Indianapolis to St. Louis, 504.  
 Milk, Chicago, between Detroit and Port Huron and Colorado common points upon the west, 109.  
 Molasses, Indianapolis to Ohio River crossings, 367.  
 Money orders, issued by express companies in competition with bankers, 15.  
 Oats, Durant, Okla., to Olla, La. 136.  
 Oats, St. Louis, Mo., to Bainbridge, Ga. 586.  
 Oats, scaleage deductions, elevators at Baltimore, 341.  
 Oats, to Milwaukee from points on Rock Island R. R. 460.  
 Oil. See Petroleum.  
 Pails, lard, Chicago and St. Paul to Spokane, 376.  
 Paint, Chicago and St. Paul to Spokane, 376.  
 Paper. See Building paper.  
 Paper bags, Chicago and St. Paul to Spokane, 376.  
 Paper-mill machinery, Pittsfield, Mass., to Millinocket, Me. 226.  
 Passengers, Pittsburg, Pa., to Newport, R. I. 470.  
 Passes, to clergymen and persons engaged in charitable work, 45.  
 Paving cement, classification, Ensley, Ala., to Lagrange, Ga. 196.  
 Peaches. See Canned peaches.  
 Peas, canned, Chicago and St. Paul to Spokane, 376.  
 Pelts, Indianapolis to Ohio River crossings, 367.  
 Perishable fruit, delivery at Pittsburg, Pa. 53.  
 Petroleum, Paola, Kans., to Boonville and Holden, Mo. 29.  
 Petroleum, Paola, Kans., to Kansas City, 245.  
 Petroleum, receipt and shipment of L. C. L. lots, 473.  
 Petroleum and products, Kansas and Missouri to Oklahoma, 42.  
 Phosphate rock, Mount Pleasant and Centerville districts, Tenn., to points in Illinois, Indiana, Ohio, Michigan, New York, and Pennsylvania, via Ohio River crossings, 79.  
 Phosphate rock, St. Blaise, Tenn., to Riddlesburg, Pa. 170.  
 Pickles, Chicago and Indianapolis to St. Louis, 504.  
 Pickles, Indianapolis to Ohio River crossings, 367.  
 Pitch. See Coal-tar cement.  
 Plaster, Grand Rapids, Mich., via Milwaukee, Wis., to Houghton, Mich. 68.  
 Plate glass, Indianapolis to Ohio River crossings, 367.  
 Plate glass, St. Paul, Minn., to Douglas, N. Dak. 301.  
 Plow points, Chicago and St. Paul to Spokane, 376.  
 Poles, Laporte, Minn., to Poplar Bluff, Mo. 627.  
 Poles, car-stake allowances, Laporte, Minn., to Louisville, Ky. 192.  
 Powder, saluting, Norfolk, Va., to Annapolis, Md. 233.  
 Pressed brick. See Brick.  
 Pyrites cinder, Buffalo, N. Y., to points in Pennsylvania and New Jersey, 9.



## COMMODITIES—Continued.

- Ranges and stoves, Chicago and St. Paul to Spokane, 376.  
 Rice-brewers', free time at New Orleans, 280.  
 Rosin, Louin, Miss., to Peoria, Ill. 25.  
 Rye, points on Rock Island to Milwaukee, 460.  
 Rye, St. Louis, Mo., to Bainbridge, Ga. 586.  
 Rye flour, Janesville, Wis., to Kansas City, Mo. 277.  
 Saluting powder, Norfolk, Va., to Annapolis, Md. 233.  
 Sauces, Chicago and Indianapolis to St. Louis, 504.  
 Sawmill machinery, Ogemaw, Ark., to Sodus, La. 532.  
 Saws, Chicago and St. Paul to Spokane, 376.  
 Scoops, Chicago and St. Paul to Spokane, 376.  
 Scouring compounds, Indianapolis to Ohio River crossing, 367.  
 Scrap iron, Douglas, Ariz., to El Paso, Tex. 451.  
 Scrap iron, Freeport, Ill., to Wheatland, Pa. 478.  
 Screen doors and windows, Indianapolis to Ohio River crossings, 367.  
 Sewing-machine stand castings, classification, 504.  
 Shingles, Lake City, Ark., to Springfield, Mo. 230.  
 Shingles, rebilling at Menasha, Wis. 33.  
 Shoes and boots, Chicago and St. Paul to Spokane, 376.  
 Shovels, Chicago and St. Paul to Spokane, 376.  
 Skylight glass, Indianapolis to Ohio River crossings, 367.  
 Soap, St. Louis, Mo., to Bainbridge, Ga. 586.  
 Spades, Chicago and St. Paul to Spokane, 376.  
 Spirituous liquors. See Liquors.  
 Stakes, allowances for, on shipment of poles from Laporte, Minn., to Louisville, Ky. 192. -  
 Stakes, allowances for, on shipments of poles from Laporte, Minn., to Poplar Bluff, Mo. 627.  
 Steam coal, Appalachia coal field in Virginia, to Bristol, Tenn. 453.  
 Steel articles, Indianapolis to Ohio River crossings, 367.  
 Steel tanks, Goshen, Ind., to Sullivan and Sheboygan, Wis. 284.  
 Stone, East Branch, N. Y., to Weehawken, N. J. 264.  
 Stoves, Indianapolis to Ohio River crossings, 367.  
 Stoves, Minneapolis, Minn., to Fremont, Ohio, 530.  
 Stoves and ranges, Chicago and St. Paul to Spokane, 376.  
 Structural iron, fabrication of, at Indianapolis, 370.  
 Sugar, New Orleans and Atlantic seaboard points to Indianapolis, St. Louis and the Ohio River crossings, 567.  
 Sugar, St. Louis, Mo., to Bainbridge, Ga. 586.  
 Sulphide of iron, Pulaski, Va., to Edgewater, N. J. 349.  
 Sweepings. See Jewelers' sweepings.  
 Table sauce, Indianapolis to Ohio River crossings, 367.  
 Tablets, Chicago and St. Paul to Spokane, 376.  
 Tanks, steel, Goshen, Ind., to Sullivan and Sheboygan, Wis. 284.  
 Telegraph poles. See Poles.  
 Tent pins, Gleason, Ark., to Dallas, Tex. 274.  
 Threshing machines, Bancroft, Tex., to Crowley, La. 599.  
 Ties, cross, Sault Ste. Marie, Mich., to Thiensville, Wis. 329.  
 Tin boxes, Chicago and St. Paul to Spokane, 376.  
 Tobacco, St. Louis, Mo., to Bainbridge, Ga. 586.  
 Tobacco, Stoughton, Wis., to Passaic, N. J. 618.  
 Travelers' checks. See Money orders.  
 Twine and cordage, Chicago and St. Paul to Spokane, 376.  
 Typewriter, Richmond, Va., to Cleveland, Ohio, 609.

## COMMODITIES—Continued.

Vegetables, delivery at Pittsburg, Pa. 53.  
 Vegetables, Green Bay, Wis., to Pattonsburg, Mo. 584.  
 Vehicles, Chicago and Indianapolis to St. Louis, 504.  
 Vehicles, East St. Louis, to Beebe, Ark. 145.  
 Vehicles, Kalamazoo, Mich., to St. Paul, Minn. 297.  
 Veneer, walnut, Kansas City to Chicago and Chicago points, 326.  
 Veneer, Chicago and Indianapolis to St. Louis, 504.  
 Vinegar, Chicago and Indianapolis to St. Louis, 504.  
 Wagons, East St. Louis, Ill., to Beebe, Ark. 145.  
 Walnut veneer, Kansas City to Chicago and Chicago points, 326.  
 Washing compounds, Indianapolis to Ohio River crossings, 367.  
 Wheat, Idaho Falls, Idaho, to McKinney, Tex. 228.  
 Wheat, Kansas City, Kans., to Galveston, Tex. 499.  
 Wheat, Oklahoma to points in Texas with milling-in-transit privilege, 138.  
 Wheat, Oklahoma points to Kansas City, Mo. 604.  
 Wheat, scalage deductions, elevators at Baltimore, 341.  
 Wheat, to Milwaukee and Chicago, 460.  
 Wheelbarrows, Chicago and St. Paul to Spokane, 376.  
 Windmills, Chicago and St. Paul to Spokane, 376.  
 Window glass, Chicago and St. Paul to Spokane, 376.  
 Window glass, Indianapolis to Ohio River crossings, 367.  
 Wire, Chicago and St. Paul to Spokane, 376.  
 Wire mattresses, Chicago and Indianapolis to St. Louis, 504.  
 Wire screens, Indianapolis to Ohio River, 367.  
 Wooden handles, Chicago and Indianapolis to St. Louis, 504.  
 Wooden ware, Chicago and St. Paul to Spokane, 376.  
 Yellow-pine lumber, Lake Charles, La., to El Paso, Tex. 49.  
 Yellow-pine lumber, Mississippi and other states to eastern points, 239.

## COMMODITIES CLAUSE.

Formerly lumber had been transported, but this business had disappeared, and the officials were anxious to find something to take its place. \* \* \* Under these circumstances, this ice business was undertaken as something which was better than no profit at all. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (309).

Ownership of rail line by shipper which serves that shipper calls for closest scrutiny to ascertain whether, through divisions or allowances, rebates are made to the shipping owner. *Crane R. R. v. P. & R. Ry. Co.* 248 (253).

So long as there is identity of ownership in the agency of transportation and the thing transported it is extremely difficult, if not impossible, to prevent discrimination between shippers. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 73.

Improper for Commission to undertake to apply a clause which has been declared unconstitutional. *American Bankers' Assn. v. American Express Co.* 15 (20).

## COMMON CARRIERS.

The providing of the highways of a nation is an act of sovereignty, essential to the existence of the nation. These highways may be provided directly by the government itself or by private individuals, under sanction of the government. If the duty is delegated to a private individual, that individual, whether person or corporation, is the agent of the government and acts subject to the well-known laws of agency. *City of Spokane v. N. P. Ry. Co.* 376 (414).

The mere fact that complainant's road is owned by a corporation which also owns the stock of the largest shipper over it, and that it was originally organized and built for the purpose of doing the work of that shipper, is not, in our opinion, controlling against its being held a common carrier. *Crane R. R. Co. v. P. & R. Ry. Co.* 248 (252).

## COMMON CARRIERS—Continued.

The act applies to common carriers and provides no distinction between those that are operated as individual properties, partnerships, or corporations. *American Bankers' Assn. v. American Express Co.* 15 (21).

## COMMON LAW.

No common-law duty resting on express company to act as collection agent of shipper, but if such obligation is assumed it arises on some independent contract, which the company may refuse to make. *Royal Brewing Co. v. Adams Express Co.* 255 (258).

The prompt and safe carriage of goods is an obligation enforced upon carriers by the common law and not by the act to regulate commerce. *Blume & Co. v. Wells, Fargo & Co.* 53.

## COMMON POINT.

Having voluntarily made a common rate on wheat and barley to Milwaukee and Chicago, complainant's proposal is that common rates should also be made to those points on corn, rye, and oats. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (466).

## COMPARATIVE RATES. See also RELATIVE RATES.

The rate on burlap bags ought to be somewhat higher than upon the burlaps, but there is no theory upon which the carriers could justly establish and this Commission approve a rate upon burlap bags twice as great as that upon the raw product. *Kent Co. v. N. Y. C. & H. R. R. Co.* 439 (441).

Having voluntarily made a common rate on wheat and barley to Milwaukee and Chicago, complainant's proposal is that common rates should also be made to those points on corn, rye, and oats. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (466).

Before we can conclude that the rate on phosphate rock is too high, because it is higher than some other rate named, we must know that the rate selected as the standard of comparison is itself reasonable. *Darling & Co. v. B. & O. R. R. Co.* 79 (83).

Difference between the coals produced in these different fields not so marked as to be worthy of consideration in determining the rate adjustment. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (289).

Considering the value of cottonwood box shooks and the incidents of its transportation, no very good reason appears why it might not take as high a rate as lumber. *Holley Matthews Man. Co. v. Y. & M. V. R. R. Co.* 436 (438).

Comparative disparity in class rates no proper basis for rearrangement of rates and disturbance of conditions. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504 (509).

Coke has ordinarily a greater value than coal and ordinarily moves at a higher rate, and if not, at least on equal rates. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453 (459).

Canned goods compared with rates in other territories on potatoes, lumber, salt, molasses, and other products, none of which comparisons tend to throw any light on the issue. *Godfrey & Son v. T. A. & L. Ry. Co.* 65 (67).

Rate on pyrites cinder should not exceed rate on iron ore from Buffalo, N. Y., to points in Pennsylvania and New Jersey. *Naylor & Co. v. L. V. R. R. Co.* 9.

Coal-tar paving cement and coal-tar pitch are identically the same commodity from every transportation standpoint. *Barrett Mfg. Co. v. L. & N. R. R. Co.* 196 (198).

Commission has several times held that the rate on cross-ties should not exceed that on rough lumber. *MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329 (330).

## COMPARATIVE RATES—Continued.

Rapid Roller Letter Copiers compared with old-style screw hand presses. *Yawman & Erbe Manufacturing Co. v. A. T. & S. F. Ry. Co.* 260 (261).

The manufactured product commonly takes a higher rate than the raw material from which it is made. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

Walnut veneer, Kansas City to Chicago, compared with lumber rates between same points. *Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co.* 326 (327).

Tent pins, rough-sawed, should not be much higher than lumber. *Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 274.

Differential in favor of sugar, as against coffee. *Indianapolis Freight Bureau v. P. R. R. Co.* 567.

## COMPETITION. See also POTENTIAL COMPETITION; WAGON COMPETITION; WATER COMPETITION.

Proportional rates from more distant points must be less per mile to permit such points to compete in the common market, and Commission not warranted in condemning a system of rate making whereby wholesome competition between producing centers is preserved. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504 (505).

Under numerous decisions of the courts and of this Commission, controlling competition, especially of water carriers, justifies lower rates to those (terminal) points than to intermediate points where the same competition does not exist and control. *Monroe Progressive League v. St. L., I. M. & S. Ry. Co.* 534 (536).

Water, at Milwaukee, justifies lower through rate on cross-ties from Sault Ste. Marie, Mich., than to Thiensville, an intermediate point. *MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329.

Defendant meets at Fall River the keen competition of another express company. Defendant is fairly entitled to adjust its rates to meet this competition. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631.

The carrier can not be permitted to compete at one point and decline to compete at another, where all conditions are the same. *Darling & Co. v. B. & O. R. R. Co.* 79 (87).

Express companies issue money orders, letters of credit, etc., and necessarily compete with banks in that business. *American Bankers' Assn. v. American Express Co.* 15 (18).

With other carriers at longer distance point may justify lower freight rates to that point than to neighboring shorter distance points not having the same competition. *Pilant v. A. T. & S. F. Ry. Co.* 178 (179).

Lake and rail routes, cause of lower proportional rates from Minneapolis to Chicago than through Chicago from Missouri River points. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

Water, at Pacific coast, on transcontinental traffic creates a dissimilarity of circumstances and conditions between the interior and the coast. *City of Spokane v. N. P. Ry. Co.* 376.

A carrier may voluntarily make, under the force of controlling competition, rates which it might not be required to make. *Indianapolis Freight Bureau v. P. R. R. Co.* 567 (576).

Ex-river coal affecting all-rail rates to interior points in Ohio and northern Indiana. *Commercial Coal Co. v. B. & O. R. R. Co.* 11 (12).

Between water carriers, one subject to the act and the other not. *In re Jurisdiction Over Water Carriers*, 205 (209).

Wagon, in transportation of cotton into Memphis. *Barton, Reisinger, Davis Co. v. St. L. I. M. & S. Ry. Co.* 222 (224).

Natural and artificial ice. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (311).

## COMPETITIVE RATE.

It is the increase of the rate against which the order is directed, and should the competitors of defendants advance their joint through rates the lower rate which would then be in effect via defendants' lines would bring business to them. *Michigan Buggy Co. v. G. R. & I. Ry. Co.* 297 (299).

There is no principle of law that requires a carrier to be content with half the traffic or that forbids it to adjust its rates so as to fight for the whole the moment it feels the effect of its competitors' rates. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (359).

A less rate is charged from Celina to the same destination over other routes. This fact alone does not establish that the rate complained of is unreasonable. *Palmer & Miller v. L. E. & W. R. R. Co.* 107 (108).

The rates referred to by defendant as being competitive are rates established by itself over one of its own branch lines, and are not rates established by a competing line. *Keich Manufacturing Co. v. St. L. & S. F. R. R. Co.* 230 (231).

A carrier with a long route is not obliged, as a matter of law, to meet the rate of a short-line competitor. *Commercial Coal Co. v. B. & O. R. R. Co.* 11.

## COMPLAINANT. See also PARTY.

The Commission must deal with the question from the standpoint of the lawful tariff rates. The act prohibits the dismissal of any complaint because it is not shown that the complainant was damaged. *Indianapolis Freight Bureau v. P. R. R. Co.* 567 (571).

Neither consignor nor consignee, but he bore burden of any charge over and above the reasonable rate, result being that he actually sustained the loss claimed. *Lindsay Bros. v. G. R. & I. Ry. Co.* 182 (183).

Charges paid by consignee, but billed back against consignor, who is therefore properly the moving party in this proceeding. *Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 274.

## COMPROMISE.

A stipulation providing for compromise settlement is approved, it appearing that the same contains no provisions inconsistent with law. *Joice & Co. v. Ill. Cent. R. R. Co.* 239.

Parties have agreed upon a sum to be paid in full satisfaction, provided Commission will approve compromise, which it does. *Goff-Kirby Coal Co. v. B. & L. E. R. R. Co.* 553 (554).

## CONCESSION.

A readjustment of state rates and the granting of certain privileges gave relief, and complainant concluded that the rates were not prejudicial, and further prosecution of the case was not desired. *Southern Kansas Millers Commercial Club v. A. T. & S. F. Ry. Co.* 604, 607; *Southern Kansas Millers Commercial Club v. C. R. I. & P. Ry. Co.* 605.

Complaint as to unjust discrimination against Indianapolis in rates on fresh meats and chairs has been satisfied. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504.

Since filing of complaint the feature relating to different ratings on dry-kiln outfits has been satisfied. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370.

Adjustment of rates from Memphis, etc., to Monroe, La. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534.

Adjustment of rates on paper mill machinery. *Jones & Sons Co. v. B. & A. R. R. Co.* 226.

Classification of jewelers' sweepings. *Rentz Bros. v. C. B. & Q. R. R. Co.* 7.

Combination rates not to exceed through. *Central Commercial Co. v. M. J. & K. C. R. R. Co.* 25.

**CONCESSION—Continued.**

Delivering carrier concurs in through rate. *Grand Rapids Plaster Co. v. P. M. R. R. Co.* 68.

Rates on ammunition. *U. S. v. N. Y. P. & N. R. R. Co.* 233.

Rates on flaxseed. *Red Wing Linseed Co. v. C. M. & St. P. Ry. Co.* 47

Reduction of through rates on fertilizer. *Montgomery Freight Bureau v. W. Ry. of Ala.* 199.

Stoppage in transit at Indianapolis for fabrication of structural iron. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370.

Tariffs checked to eliminate cases in which through rates exceed local combinations. *Lindsay Bros. v. L. S. & M. S. Ry. Co.* 284.

Through rate established on sacked shelled oats. *Venus v. St. L. I. M. & S. Ry. Co.* 136.

Through rate established on vegetables. *Thomas v. C. M. & St. P. Ry. Co.* 584.

**CONCURRENCE.**

Delivering line did not concur in rate published, resulting in overcharge. *Grand Rapids Plaster Co. v. P. M. R. R. Co.* 68.

**CONDUITS, CLAY.** See **COMMODITIES.****CONGESTION.**

On intermediate line over which shipment routed by consignor; shipment diverted, with agreement to protect rate via other line; diverting carrier must assume responsibility for higher rate. *Woodward & Dickerson v. L. & N. R. R. Co.* 170 (171).

**CONGRESS INTENT.**

That Congress did not see fit to alter the third and fourth sections is highly persuasive that it was the intention of that body to leave the law and its practical working exactly as it has been. *City of Spokane v. N. P. Ry. Co.* 376 (388).

**CONNECTING LINES.**

Under "any-quantity" rate shipper no right to demand car of given size; carrier may use available equipment, notwithstanding separate tariffs of connecting line provide minimum weight under carload rate. *Falls & Co. v. C. R. I. & P. Ry. Co.* 269.

**CONSIGNEE.** See also **PARTY.**

Character of consignee or use made of coal is not proper or lawful basis for difference in rates on coal of same kind. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453 (456).

**CONSOLIDATION.** See also **MERGER.**

Different commodities at carload rate, water competition may justify. *City of Spokane v. N. P. Ry. Co.* 376.

**CONSTRUCTION.**

In the case of doubtful or ambiguous provisions, reference may be had to the history of the legislation, the evils sought to be corrected, and the remedy intended to be provided. *In re Jurisdiction Over Water Carriers*, 205 (206).

**CONTRACT.**

With respect to the performance by carriers for the shipping public of their general duties as common carriers other than those covered by the act, the Commission is wholly without authority. Breaches of duty in that respect, such as the loss of or damage to property in transit, the failure to make delivery safely and with reasonable despatch in accordance with the contract, express or implied, which a carrier enters into when accepting a shipment for carriage, are matters that are solely within the jurisdiction of the courts. *Blume & Co. v. Wells, Fargo & Co.* 53 (55).

**CONTRACT—Continued.**

Under governmental prescribed system of publishing rates carrier is not free to contract with respect to the rate, but is required by law to perform service for public under tariff charges, which, though furnished by it, are legally enforceable, not by reason of any contract, but by virtue of the legal prescription. *Woodward & Dickerson v. L. & N. R. R. Co.* 170 (173).

Acceptance of C. O. D. shipments of intoxicating liquors a matter of, and express company may refuse to make notwithstanding any usage or custom it may have established or followed. *Royal Brewing Co. v. Adams Express Co.* 255 (258). The bill of lading or the contract of shipment under which this traffic moves should plainly state the liability assumed. Any other course of business will inevitably give the shipper in many cases a defective contract. *Wyman, Partridge & Co. v. B. & M. R. R.* 577 (582).

Existing allowances to complainant for handling cars to and from other industries may be too low. These allowances are mere matters of contract between complainant and defendants, over which Commission has no primary control. *Crane R. R. Co. v. P. & R. Ry. Co.* 248 (254).

Circular purporting to authorize reconsignment not lawful tariff, but more in nature of private contract between carrier and shipper. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235 (237).

Railroads should not be allowed to so divide and diversify themselves by contract and traffic agreements as to work a practical discrimination. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 73.

There is no such thing as a contract between the railway and the shipper that a certain rate shall be charged, for the railway rate is a matter of public concern. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109.

Between shipper and carrier to make up extra train and charge above tariff rate for special service; reparation of extra charge ordered. *Carstens Packing Co. v. B. A. & P. Ry. Co.* 432.

Payment of allowances to Omaha elevator under the Peavey contract for handling grain owned by that elevator, as it was actually handled, was illegal. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (92).

It is admitted that the reasonableness of the freight charge in question is to be determined from considerations independent of contract. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (292).

All private contracts must give way when they conflict with federal regulation duly prescribed by the Congress. *American Bankers' Assn. v. American Express Co.* 15 (21).

Combination of locals herein only legal rate, regardless of contract and irrespective of various rates quoted. *Porter v. St. L. & S. F. R. R. Co.* 1 (3).

**CORDAGE AND TWINE.** See **COMMODITIES.**

**CORN.** See **COMMODITIES.**

**COSTS.**

The Commission does not assess costs; nor does it allow attorney's fees; nor does it order for the payment of money have the effect of an order, decree, or judgment of a court; nor are such orders enforceable by process; nor do they become liens upon the property of a defendant. *Washer Grain Co. v. M. P. Ry. Co.* 147.

**COST OF CONSTRUCTION, MAINTENANCE, OPERATION, AND REPRODUCTION OF GREAT NORTHERN AND NORTHERN PACIFIC.**

Considered in the establishment of transcontinental rates. *City of Spokane v. N. P. Ry. Co.* 376 (395).

**COST OF OPERATION.**

Defendant express company operated at loss. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631 (633).

## COST OF SERVICE.

An increase in the cost of labor, and in the price of railway materials and supplies, does not necessarily imply a decrease in the net earnings of a carrier or preclude the possibility of an increase in its net earnings due to an increase in the volume of traffic. *Shippers' & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co.* 264.

In determining cost of service, method of determining terminal expense per car "which is merely an average obtained by dividing the total terminal cost, including a proportion of these fixed charges, by the total number of cars handled," disapproved. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (319).

Rates over the same lines, between the same points but under differing conditions, must be made with some consideration for the difference in the cost of service. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (558).

If the express company's charges for transportation of money covered only the actual cost of that service it would be no discrimination for it to ship its own money. *American Bankers' Assn. v. American Express Co.* 15 (22).

Switching for another shipper much larger than that done for complainant, and, hence, it can be done at less cost per car. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443 (447).

There is no standard by which either the cost of the service or the reasonableness of these rates can be fixed with any certainty. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109 (132).

The reasonableness of a reconsignment charge is dependent upon the cost of that service. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 546 (549).

Handling of property through end doors involves increased cost to the railroads. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370 (372).

Bananas, imported, from New Orleans to El Paso, Tex. *Payne v. M. L. & T. R. R. & S. S. Co.* 185 (191).

COTTON. See COMMODITIES.

COTTON LINTERS. See COMMODITIES.

COTTON PIECE GOODS. See COMMODITIES.

COUCHES. See COMMODITIES.

COUNTERCLAIM. See OFFSET.

## COURT.

In cases of exaction of rate higher than published tariff shipper may bring suit in court in first instance, but the act also appears to give Commission and courts concurrent jurisdiction in this respect. *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37 (39).

Question of loss of weight of grain during elevation is one of property rights that must be disposed of in the courts under the general law. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341 (346).

By amendments to act of 1906, orders of Commission, if resisted by carriers, may be reviewed before jury in courts of common law. *Washer Grain Co. v. M. P. Ry. Co.* 147 (154).

CREAM. See COMMODITIES.

## CREAMERY.

History of origin and development of the creamery business in the territory involved and the competing methods used, given and discussed. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109.

CREOSOTED LUMBER. See COMMODITIES.

CROSS-TIES. See COMMODITIES.

CUTTERS. See COMMODITIES.



**DAIRY PRODUCTS.** See **COMMODITIES.**

**DAMAGES.** See **REPARATION.**

**DAMAGE-IN-TRANSIT.**

The prompt and safe carriage of goods is an obligation enforced upon carriers by the common law and not by the act to regulate commerce. *Blume & Co. v. Wells, Fargo & Co.* 53.

**DEDUCTIONS.**

Absolute precision in the adjustment of a schedule of scalage deductions so as to meet all varying conditions is beyond reasonable possibility. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341 (344).

**DELIVERY.** /

The right of an express company to maintain a free package pick up and delivery at one point, while not maintaining such service at another, must necessarily be controlled by the conditions existing at each place. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631.

L. C. L. shipments of coal oil and products of petroleum restricted to one day in a week; rule found unreasonable. *National Petroleum Assn. v. L. & N. R. R. Co.* 473.

Fruit and vegetables at wrong station in Pittsburg, resulting in loss and damage. No relief before Commission. *Blume & Co. v. Wells, Fargo & Co.* 53.

**DEMURRAGE.**

On account of bunching cars for loading, demurrage accrued. Commission is unable to find these demurrage charges were in this case unreasonable. *American Creosoting Works v. Ill. Cent. R. R. Co.* 160.

The Commission's order of June 2, 1908, that its ruling *In re Demurrage Charges on Privately Owned Tank Cars* would not be retroactive, requires dismissal of complaint. *Cambria Steel Co. v. B. & O. R. R. Co.* 484.

Consignee released from obligation to pay demurrage accruing during pendency of dispute, when delivering carrier demands more than lawful rate. *Porter v. St. L. & S. F. R. R. Co.* 1 (5).

**DENIMS.** See **COMMODITIES.**

**DENSITY.**

The greater density and other conditions of traffic east of Chicago tend to a lower rate per ton per mile than is fairly to be expected on the western lines. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (357).

Generally the density of traffic is less west of the Missouri River and there are other reasons why rates may reasonably be higher in that territory. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (562).

**DEPARTMENT OF AGRICULTURE.**

Claimed that the local creamery method of manufacturing butter should, in the interest of the public, be fostered and the centralizer method discouraged. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109 (123).

**DESTINATION.**

Bananas from Central America destined, nominally, to New Orleans, but inland destination contemplated. *Payne v. M. L. & T. R. R. & S. S. Co.* 185 (187).

**DEVICE.**

It makes no difference whether unlawful result is accomplished by preferential rates on port-to-port traffic, on intrastate traffic, by a free pass or by actual payment of money; in either case there is a violation of law for which penalty is provided. *In re Jurisdiction Over Water Carriers* 205 (210).

**DIFFERENTIAL.**

The manufactured product commonly takes a higher rate than the raw material from which it is made. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

**DIFFERENTIAL—Continued.**

For reasons appearing in the decision the Commission does not attempt to determine whether the 10-cent differential applied to Toms Creek over Appalachia is or is not unreasonable. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286.

**DISCRETION.**

Location of a water port does not entitle it to lower rates by rail, although such preference may lawfully be accorded by a carrier in the protection of its own interests. *Darling & Co. v. B. & O. R. R. Co.* 79 (87).

The carriers can not be compelled to meet water competition; they do it of their own volition, or whenever the same is potent enough to compel them to do so in order to secure the traffic. *Bainbridge Board of Trade v. L. H. & St. L. Ry. Co.* 586 (594).

Carriers may voluntarily make rates lower than they may lawfully be required to make. A carrier with a long route is not obliged, as a matter of law, to meet the rate of a short-line competitor. *Commercial Coal Co. v. B. & O. R. R. Co.* 11.

There is no principle of law that requires a carrier to be content with half the traffic or that forbids it to adjust its rates so as to fight for the whole the moment it feels the effect of its competitors' rates. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (359).

We should not be understood as holding that a railroad must under all circumstances meet the rate of its competitor. *North Bros. v. C. M. & St. P. Ry. Co.* 70 (71).

A carrier may voluntarily make, under the force of controlling competition, rates which it might not be required to make. *Indianapolis Freight Bureau v. P. R. R. Co.* 567 (576).

The defendants may voluntarily publish a free back haul or a merely nominal rate for the extra service. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138 (141).

**DISCRIMINATION.**

The rates from the Appalachia coal district in Virginia, including the Black Mountain coal district, which exceed 25 cents above the rate from Coal Creek to all points on defendants' lines east and south of Morristown, Tenn., as far south as Charleston, S. C., and Augusta, Ga., unduly discriminate against the Black Mountain and Appalachia operators and unduly prefer Coal Creek operators. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286.

Because the revenue per ton per mile yielded by rates from farther distant points is less than that yielded by rates from a shorter distant point, it does not necessarily follow that the latter is subjected to unjust discrimination. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504 (513).

When unjust discrimination at one point in favor of another is alleged, it must be shown that the circumstances and conditions at each of the points are substantially similar. *Bainbridge Board of Trade v. L. H. & St. L. Ry. Co.* 586 (593).

It can not be said that moving grain over shorter routes which gives the long haul to the carriers upon whose lines it originates unjustly discriminates against Kansas City. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491 (498).

It is the duty of a common carrier to receive and carry, upon reasonable terms, all goods tendered in suitable condition, and it can not lawfully discriminate in favor of any person, product, or locality. *Standard Lime & Stone Co. v. Cumberland Valley R. R. Co.* 620.

Not within authority or power of Commission to remove discrimination except through reduction in rates, which necessarily operates to reduce revenues. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (560).

If the express company's charges for transportation of money covered only the actual cost of that service, it would be no discrimination for it to ship its own money. *American Bankers' Assn. v. American Express Co.* 15 (22).

## DISCRIMINATION—Continued.

An order for reparation in this case would effectuate a discrimination against all other shippers who are barred from reparation for demurrage in the same circumstances. *Cambria Steel Co. v. B. & O. R. R. Co.* 484 (486).

The rate adjustment which groups Monroe, Alexandria, and Shreveport under common rates is not unreasonable, and not unjustly discriminatory against Monroe. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534.

We have never held that payment of elevator allowances was unlawful *per se*. We have held that such payment worked a discrimination. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (94).

Lower rates from eastern points to Pacific coast through Spokane than to Spokane; *Held*, water competition on the coast justifies. *City of Spokane v. N. P. Ry. Co.* 376.

Railroads should not be allowed to so divide and diversify themselves by contract and traffic agreements as to work a practical discrimination. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 73.

Lower rates to Rio Grande River do not, *ipso facto*, constitute a discrimination against interior cities. *Pilant v. A. T. & S. F. Ry. Co.* 178 (179).

Granting of commercial elevation at one locality and denying it at another. *Washer Grain Co. v. M. P. Ry. Co.* 147 (158).

None, in refusing to handle C. O. D. shipments of liquor. *Royal Brewing Co. v. Adams Express Co.* 255.

Competition as a factor. *Darling & Co. v. B. & O. R. R. Co.* 79 (84).

## DISCRIMINATIONS—Classified List.

## ARTICLES.

Coal-tar pitch and coal-tar paving cement, 196.

Pyrates cinder and iron ore, 9.

## FACILITIES.

Jewelers' sweepings, 7.

Petroleum, receipt of L. C. L. lots, 473.

## PLACES.

Atchison, Kans., elevator allowances, 147.

Black Mountain coal district, Va., in favor of Appalachia coal district, 286.

Indianapolis in favor of Chicago, 504.

Indianapolis in favor of St. Louis, 567.

Kansas points, oil, in favor of Oklahoma points, 245.

Martinsburg, W. Va., in favor of Bunker Hill, Va. 620.

Milwaukee in favor of Chicago, 460.

Montgomery in favor of New Orleans, 199.

Racine, Wis., in favor of Milwaukee, 468.

Spokane in favor of coast points, 376.

Wabeno in favor of Wausau and Rhineland, Wis. 427.

## DISTANCE.

Yellow-pine lumber, Lake Charles, La., to El Paso, Tex., over two lines, can not be found unreasonable because a single line, carrying it between the same points over a shorter route, publishes a lower rate. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

The Commission has often said that distance is to be regarded in determining the reasonableness of rates, and has also frequently said that distance alone can not control. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (539).

It is a rule of well-nigh universal application that as distance increases difference in distance becomes relatively less important. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (296).

**DISTANCE—Continued.**

It is fair to assume that when 91 miles of the 96 is covered by a 25-cent rate, transportation for the remaining 5 miles is not under such dissimilar circumstances and conditions as to warrant the exaction of 34 cents more in charges. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (601).

Rate on rosin from Louin, Miss., to Peoria, Ill., more than twice as much as from Laurel, Miss., a point 3 miles farther distant from Peoria. *Central Commercial Co. v. M. J. & K. C. R. R. Co.* 25.

In establishing rates to Spokane we must have regard to some extent to distance. *City of Spokane v. N. P. Ry. Co.* 376 (422).

In comparing the rate per-ton mile, length of haul is a vital element. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (320).

**DIVERSION.**

Contrary to shippers' instructions, shipment of phosphate rock diverted to wrong intermediate carrier, resulting in higher charge; diverting carrier must assume responsibility for overcharge. *Woodward & Dickerson v. L. & N. R. R. Co.* 170.

By agent of intermediate carrier, to route over which no through rate existed. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 192.

By initial carrier, unnecessarily, without knowledge or consent of shippers. *Carstens Packing Co. v. O. R. & N. Co.* 482.

**DIVISION.**

While a division of a through rate long accepted by a carrier may often be pertinent evidence, it is not a sound final test of the reasonableness of the through rate itself. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

The fact that a road reaches other primary grain markets may fairly be said to give it certain equities in the adjustment of the divisions of any through rates that it may establish under our order. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (467).

Admission that a division of a through rate for a longer distance yields a profit raises a presumption that a higher local rate for a less distance would yield a reasonable profit. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453 (458).

Establishment of through routes ought not to be delayed by any disagreement among carriers with respect to divisions. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138 (142).

Rate subsequently reduced, initial line still retaining its former division of the higher rate. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49 (50).

Of through rate on coal allowed by the Santa Fe. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 73.

Shrunk for the purpose of meeting competition at Lake ports. *Darling & Co. v. B. & O. R. R. Co.* 79 (85).

**DOCK INSURANCE.**

If shipper is so situated that he can not conveniently remove the goods within a reasonable time, and therefore requires dock insurance, there is no hardship in compelling him to pay for such protection, according to the length of time for which it is needed. *Wyman, Partridge & Co. v. B. & M. R. R.* 577 (579).

"DOCKAGE." See **SCALAGE DEDUCTIONS.**

**DOMESTIC COAL.** See **COMMODITIES.**

**DOMESTIC GRAIN.** See **COMMODITIES.**

**DOORS, SCREEN.** See **COMMODITIES.**

**DRAFTS.** See **COMMODITIES.**

**DRAYAGE.** See **TRANSFER SERVICE.**

**DRUGS.** See **COMMODITIES.**

**DRY GOODS.** See **COMMODITIES.**

**DRY-KILN OUTFITS.** See **COMMODITIES.**

**EARNINGS.** See also **PROFIT; REVENUES.**

The Great Northern Railway Company has in the past distributed its stock issues among its stockholders at par from time to time, although the market value of the stock was often much above par. Without expressing any opinion upon the legality or propriety of this practice, it is held that this fact, at this time, can have no bearing upon the earnings to which that company is entitled. *City of Spokane v. N. P. Ry. Co.* 376.

Bridge arbitrary, and cost of delivery at public sheds deducted from. *Barton, Reisinger, Davis Co. v. St. L. I. M. & S. Ry. Co.* 222.

Decrease in, not necessarily implied from an increase in cost of service. *Shippers' & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co.* 264.

Small, not conclusive upon reasonableness of rates. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (564).

**EGGS AND BUTTER.** See **COMMODITIES.**

**ELEVATION.**

"Scalage deductions" do not affect rates, as tariff rules are simply notice that while shipment weighed so much when taken into elevator, it will weigh so much less when taken out, because of weight of dirt, etc., lost in elevation. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341.

Hereafter wherever elevation in the transportation sense of the term is afforded by the railroads it must be without any commercial advantages to the shipper either in the way of mixing, grading, cleaning, clipping, or of storage beyond the period of ten days. *Washer Grain Co. v. M. P. Ry. Co.* 147 (151).

**ELEVATOR ALLOWANCES.**

The Commission has condemned commercial elevation as practiced by carriers, or money compensation therefor; at the time of the alleged discrimination, however, three-fourths of a cent per 100 pounds was considered a proper allowance in lieu of such elevation. *Washer Grain Co. v. M. P. Ry. Co.* 147.

This Commission can not, without stultifying itself, make any ruling which will condemn as unlawful the payment of these allowances during the time they have been expressly sanctioned by its decisions. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90.

**"ELEMOSYNARY."** See **CHARITABLE.**

**EMIGRANTS' MOVABLES.** See **COMMODITIES.**

**EMPTY CANS.**

Complaint alleged that defendant declines to issue receipt for empty cans returned free on shipments of cream from various country stations to complainant's creamery at Omaha. As defendant intends to issue such receipts as soon as the new scale of rates on cream is inaugurated, no order is issued. *Fairmont Creamery Co. v. Pacific Express Co.* 134.

**EMPTY CARS.**

Cars must be returned within forty-eight hours in order to obtain benefit of allowance for elevation. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90.

**ENGINES.** See **COMMODITIES.**

**EQUAL TREATMENT.**

It seems plain that the duty of this Commission is to establish just and fair transportation charges in so far as it can be done and allow these rival creamery methods to operate under those charges. The Commission should not establish a scale of rates with a view and for the purpose of fostering or discouraging either form of this industry. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109.

**EQUAL TREATMENT—Continued.**

If the Commission felt that the rate charged was unjust and unreasonable and that reparation should be granted it would so declare, regardless of whether the number of shippers who had paid such rate was large or small. All should be treated alike. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49 (51).

The duty imposed by law is to give equal treatment to all shippers who are in a position to demand it, and this includes the right to reach competitive markets on relatively equal terms. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286.

The public has the right to require equal and uniform treatment within the bounds of reason. *Darling & Co. v. B. & O. R. R. Co.* 79 (87).

The fundamental principle of the act is like treatment to all alike under like circumstances. *Cambria Steel Co. v. B. & O. R. R. Co.* 484 (486).

**EQUALIZING RATES.**

The manufactured product commonly takes a higher rate than the raw material.

But the maintenance of a parity of rates on wheat and flour tends to equalize conditions at all points at which flour-milling industries exist, and seems to be a sound rate policy. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

When a carrier has established a reasonable rate for transportation of a given commodity, it can not be required to change that rate to accord with differing values of same commodity produced by different shippers—in other words, to equalize natural business conditions. *Hafey v. St. L. & S. F. R. R. Co.* 245 (246).

Carriers are not required by law, and could not in justice be required, to equalize natural disadvantages, such as location, cost of production, and the like. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286.

The privilege of stoppage in transit at the through rate is not the only method by which competing intermediate points may be equalized. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370 (375).

It is not possible to have a rate adjustment which places all towns and cities upon an exact equality. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (561).

**EQUIPMENT. See also CARS.**

Whether shipments of petroleum oils shall be transported in the same car with general merchandise or in cars set aside for this particular traffic, the carrier must determine for itself. *National Petroleum Assn. v. L. & N. R. R. Co.* 473 (476).

A change in the size of should naturally be followed by a change in rules which were made because of smaller equipment in use at the time such rules were established. *Bennett v. M. St. P. & S. Ste. Marie Ry. Co.* 301 (303).

Under a local any-quantity rate the carrier may use any available equipment, notwithstanding the fact that the tariffs of a connecting line provide a minimum weight under a carload rate. *Falls & Co. v. C. R. I. & P. Ry. Co.* 269.

Special service for ice transportation. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (312).

**ERROR.**

Negligence of carrier can not deprive shipper of any lawful privilege afforded by another carrier. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235.

An act of negligence which deprives the shipper of the enjoyment of an unlawful rate can not be made the basis of a claim for reparation. *Folmer & Co. v. G. N. Ry. Co.* 33.

Shipper's agent shipped contrary to instructions; Commission no authority to grant relief. *Carstens Packing Co. v. O. S. L. R. R. Co.* 429.

Agent quoted incorrect rate; as law stands, no remedy before Commission. *Whitcomb v. C. & N. W. Ry. Co.* 27 (28).

Wrong rate quoted. *Godfrey & Son v. T. A. & L. Ry. Co.* 65 (66).

Rate quoted by initial carrier. *Porter v. St. L. & S. F. R. R. Co.* 1.

**ESTIMATED WEIGHT.** See **WEIGHT.**

**EXPORT RATE.**

Proportional rates on flour from Missouri River through Chicago to seaboard. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

**EXPRESS COMPANIES.**

Refusal of, to accept C. O. D. shipments of intoxicating liquors no discrimination.

*Royal Brewing Co. v. Adams Express Co.* 255.

Doing money-order business. *American Bankers' Assn. v. American Express Co.* 15 (18).

**EXPRESS RATES.**

Boston, Mass., to Bristol Ferry, R. I., compared with charge from Boston to Fall River, Mass. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631.

**EX-RIVER COAL.**

Affecting all-rail rates to interior points in Ohio and northern Indiana. *Commercial Coal Co. v. B. & O., R. R. Co.* 11 (12).

**FABRICATION.**

In-transit, structural iron and steel, at Indianapolis and reshipment at through rate.

*Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370.

**FEED.** See **COMMODITIES.**

**FERTILIZER.** See **COMMODITIES.**

**FIRE BRICK.** See **COMMODITIES.**

**FIXED CHARGES.**

The fixed charges of a railroad sometimes represent the entire value of the property.

Instances could easily be cited where a railroad ought not to earn in excess of its fixed charges. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (319).

**FIXING RATES.** See also **MEASURE OF RATE.**

Under the law carriers must initiate rates, and so long as they do not abuse the right conferred upon them by the statute, the Commission is not justified in penalizing them. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 56.

**FLAXSEED.** See **COMMODITIES.**

**FLOATAGE.**

Includes delivery of car and lading, while lighterage includes delivery only of the lading. *Harlow Lumber Co. v. A. C. L. R. R. Co.* 501 (503).

**FLOOD.**

Because of washouts, shipment diverted to another road without knowledge or consent of shippers, such diversion being unnecessary, for the line had been reopened and was in operation at the time. *Carstens Packing Co. v. O. R. & N. Co.* 482.

**FLOUR.** See **COMMODITIES.**

**FLUCTUATIONS.**

A commodity that moves in as large volume as grain is more or less sensitive to small fluctuations and differences in rates. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341 (347).

**FOREIGN CARS.**

All cars tendered by the Union Pacific for movement of grain must be counted as cars of the Union Pacific Company. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (96).

**FOREIGN COMMERCE.**

Bananas, imported, through New Orleans to El Paso. *Payne v. M. L. & T. R. R. & S. S. Co.* 185.

**FORMAL PETITION.** See also **INFORMAL COMPLAINT.**

Not necessary to bar running of statute of limitations. *Venus v. St. L. I. M. & S. Ry. Co.* 136 (137).

**FRANCHISES.** See **CHARTERS.****FREE DELIVERY.**

Express packages within first three zones from Boston. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631 (634).

**FREE SERVICE.**

Points off main line allowed free back haul. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138.

**FREE TIME.**

Expired before loading, on account of bunching of cars. *American Creosoting Works v. Ill. Cent. R. R. Co.* 160.

**FREE TRANSPORTATION.** See **PASSES.****FRESH MEATS.** See **COMMODITIES.****FRUIT.** See **COMMODITIES.****FRUIT JARS.** See **COMMODITIES.****FUEL WOOD.**

It is as necessary and as proper to include fuel wood in emigrant movables as to include fence posts. *Place v. T. P. & W. Ry. Co.* 543 (545).

**FURNITURE.** See **COMMODITIES.****FUTURE RATES.**

This Commission can not undertake by its orders to ratify the agreement of parties as to past or future rates. *Holley Matthews Mfg. Co. v. Y. & M. V. R. R. Co.* 436 (437).

**GLASS AND PRODUCTS.** See **COMMODITIES.****GOVERNMENT OWNERSHIP.**

Many governments construct and operate their own railways; ours has elected to discharge this function of sovereignty by delegation to private corporations, who act as agents for the Government in this respect. *City of Spokane v. N. P. Ry. Co.* 376 (416).

**GOVERNMENT VALUATION.** See **VALUATION.****GRAIN.** See **COMMODITIES.****GREAT NORTHERN RAILWAY COMPANY.**

Earnings have in recent years been excessive; considered in the establishment of rates. *City of Spokane v. N. P. Ry. Co.* 376 (418).

**GROCERIES.** See **COMMODITIES.****GROUP RATES.**

A carrier can not lawfully so group its mines with respect of rates as to unduly discriminate against any locality. The duty imposed by law is to give equal treatment to all shippers who are in position to demand it, and this includes the right to reach competitive markets on relatively equal terms. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286.

The adjustment of a group of rates as a whole might be just and reasonable, even though each rate might not of itself be just and reasonable. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (538).

Defendant has classified the various lumber-producing points on its lines in northern and northeastern Wisconsin in groups. *Jones Lumber Co. v. C. & N. W. Ry. Co.* 427.



**HARDWARE.** See **COMMODITIES.**

**HAY.** See **COMMODITIES.**

**HEATERS.** See **COMMODITIES.**

**HIDES.** See **COMMODITIES.**

**HOGS.** See **COMMODITIES.**

**HORSES.** See **COMMODITIES.**

**HOUSEHOLD GOODS.** See **COMMODITIES.**

**ICE.** See **COMMODITIES; NATURAL ICE.**

### **IMPORT.**

While a case might possibly arise in which it would be the duty of the carrier to protect an industry against a low import rate by somewhat reducing its otherwise reasonable domestic rates, such is not this record. *Kent Co. v. N. Y. C. & H. R. R. R. Co.* 439 (442).

Bananas, Central America to New Orleans, reshipped to interior destinations. *Payne v. M. L. & T. R. R. & S. S. Co.* 185.

Rice, storage at New Orleans. *Gouch & Co. v. Ill. Cent. R. R. Co.* 280.

### **IN AND OUT.**

Southern lines regard it as better policy to move phosphate rock south than north, since movement south is largely to fertilizer mills located on their own lines, so that they can obtain not only the haul of the rock in, but also transport the manufactured products out. *Darling & Co. v. B. & O. R. R. Co.* 79 (84).

Corn is shipped to these points for feeding purposes so that the defendants obtain the haul of the grain in and the fattened stock out. *Cooper & Son v. C. B. & Q. R. R. Co.* 324 (325).

### **INBOUND.**

Broom corn to Wichita on local rates, free storage for one year, may be reconsigned upon surrender of freight bills and refund down to difference in through rate and from concentrating point plus 5 cents per 100 pounds. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219 (220).

### **INDUSTRIAL LINE.**

Allowances to for switching. *Crane R. R. Co. v. P. & R. Ry. Co.* 248.

### **INDUSTRIAL RATES.**

It is difficult to see how the maintenance of these rates for the last eight or ten years can be justified upon the theory that they were intended merely to establish an infant industry and with the expectation that they might be subsequently advanced. *Darling & Co. v. B. & O. R. R. Co.* 79 (81).

Where, upon the strength of a given rate, capital has been invested and industrial conditions have become established, this rate can not be discontinued without taking into account its effect upon these commercial and industrial conditions. *Green Bay Business Men's Assn. v. B. & O. R. R. Co.* 59.

Complainants' suggestion that the flour-milling industry of this country can be fostered by an order requiring carriers to the seaboard to maintain lower rates on flour than on wheat involves a matter of national policy beyond authority of Commission to adopt. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

While a case might possibly arise in which it would be the duty of the carrier to protect an industry against a low import rate by somewhat reducing its otherwise reasonable domestic rate, such is not this record. *Kent Co. v. N. Y. C. & H. R. R. R. Co.* 439 (442).

Where particular industry has grown up under rates voluntarily established by carriers, these rates can not be advanced without considering the effect upon that industry. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109.

## INDUSTRIAL RATES—Continued.

Business of complainants has been built up under much lower rates. \* \* \* All that, however, would be no reason for requiring the defendants to perform this service for a sum which would not fairly compensate them. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (316).

The Commission should not establish a scale of rates with a view and for the purpose of fostering or discouraging either form of this creamery industry. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109.

A common carrier, in order to build up and foster industries on its own lines, can not lawfully refuse to carry the products of like industries located on connecting lines. *Standard Lime & Stone Co. v. Cumberland Valley R. R. Co.* 620.

## INFLAMMABLE OILS.

L. C. L. shipments restricted to one day in a week; rule found unreasonable and two days a week prescribed. *National Petroleum Assn. v. L. & N. R. R. Co.* 473.

## INFORMAL COMPLAINT.

Sufficient to stop running of statute of limitations. *Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 274 (276); *Duluth Log Co. v. Minn. & Int. Ry. Co.* 627 (630); *Folmer & Co. v. G. N. Ry. Co.* 33 (34); *Hartman Furniture & Carpet Co. v. Wis. Cent. Ry. Co.* 530 (531); *Venus v. St. L. I. M. & S. Ry. Co.* 136 (137); *Woodward & Dickerson v. L. & N. R. R. Co.* 170.

## INSTRUCTIONS.

It is the duty of the initial carrier to obey the specific instructions furnished by complainant. When a shipper names the carriers that are to transport his shipment, it must be assumed that he is relying on his own investigations, and that for some reason he considers it expedient that the shipment move over the route indicated by him. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 627.

It is the duty of a carrier to transport shipments via the route designated by the consignor, and if this causes additional expense to the shipper the carrier incurs no liability therefor. *Bregman & Co. v. Pa. Co.* 478 (479).

Its (carrier's) duty is to transport merchandise of shippers in accordance with their reasonable instructions. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (464).

## INSULATOR PINS. See COMMODITIES.

## INSURANCE. See MARINE INSURANCE.

## INTEREST.

Cases in which interest is included in orders for reparation:

*Advance Thresher Co. v. Orange & N. W. R. R. Co.* 599.

*American Refractories Co. v. E. J. & E. R. R. Co.* 480.

*Barrett Mfg. Co. v. L. & N. R. R. Co.* 196.

*Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 274.

*Bennett v. M. St. P. & S. Ste M. Ry. Co.* 301.

*Carstens Packing Co. v. B. A. & P. Ry. Co.* 432.

*Carstens Packing Co. v. O. R. & N. Co.* 482.

*Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 546.

*Central Commercial Co. v. M. J. & K. C. R. R. Co.* 25.

*Channon Co. v. L. S. & M. S. Ry. Co.* 551.

*Cooper & Son v. C. B. & Q. R. R. Co.* 324.

*Duluth Log Co. v. Minn. & Int. Ry. Co.* 192, 627.

*Farley & Loetscher Mfg. Co. v. C. M. & St. P. Ry. Co.* 602.

*General Chemical Co. v. N. & W. Ry. Co.* 349.

*Godfrey & Son v. Tex. Ark. & La. Ry. Co.* 65.

*Grand Rapids Plaster Co. v. P. M. R. R. Co.* 68.

*Hartman Furniture & Carpet Co. v. Wis. Cent. Ry. Co.* 530.

## INTEREST—Continued.

Cases in which interest is included in orders for reparation—Continued.

- Holley Matthews Mfg. Co. v. Y. & M. V. R. R. Co. 436.  
 Hydraulic Press Brick Co. v. Vandalia R. R. Co. 175.  
 Keich Mfg. Co. v. St. L. & S. F. R. R. Co. 230.  
 Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co. 37.  
 Lindsay Bros. v. G. R. & I. Ry. Co. 182.  
 Lindsay Bros. v. L. S. & M. S. Ry. Co. 284.  
 Lindsay Bros. v. Mich. Cent. R. R. Co. 40.  
 MacGillis & Gibbs v. C. M. & St. P. Ry. Co. 329.  
 Michigan Buggy Co. v. G. R. & I. Ry. Co. 297.  
 Milwaukee Electric Ry. & Light Co. v. C. M. & St. P. Ry. Co. 468.  
 Nebraska-Iowa Grain Co. v. U. P. R. R. Co. 90.  
 Nollenberger v. Mo. P. Ry. Co. et al. 595.  
 North Bros. v. C. M. & St. P. Ry. Co. 70.  
 Parlin & Orendorff Co. v. St. L. I. M. & S. Ry. Co. 145.  
 Place v. T. P. & W. Ry. Co. 543.  
 Red Wing Linseed Co. v. C. M. & St. P. Ry. Co. 47.  
 Rosenbaum Grain Co. v. M. K. & T. Ry. Co. 499.  
 Salomon Bros. & Co. v. N. O. & N. E. R. R. Co. 332.  
 Thomas v. C. M. & St. P. Ry. Co. 584.  
 Washer Grain Co. v. Mo. P. Ry. Co. 147.  
 Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co. 219.  
 Williamson v. O. S. L. R. R. Co. 228.  
 Woodward & Dickerson v. L. & N. R. R. Co. 170.

## INTERMEDIATE. See also Long and Short Haul.

Through rate from intermediate points from which no specific through rate was published. Williamson v. O. S. L. R. R. Co. 228.

## INTERSTATE COMMERCE.

Coal, Gallup, N. Mex., to El Paso, Tex., by one carrier, delivered to a second carrier for delivery to consignee on tracks of such second carrier in El Paso, is interstate traffic, though first carrier collects only its charge to El Paso and the second collects all of the switching charge at El Paso. West Texas Fuel Co. v. T. & P. Ry. Co. 443.

Wholly by railroad subject to act; wholly by water not subject; partly by water and partly by railroad, under a common control, management, or arrangement for a continuous carriage or shipment, is subject to act. *In re Jurisdiction Over Water Carriers*, 205 (207).

Coal, Appalachia, Va., destined for delivery across the main street to that part of Bristol in Tennessee is interstate commerce. Board of Mayor & Aldermen v. V. & S. W. Ry. Co. 453 (454).

## INTERVENERS.

- Beatrice Creamery Co. v. Ill. Cent. R. R. Co. 109.  
 Bulte Milling Co. v. C. & A. R. R. Co. 351.  
 Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co. 138.  
 City of Spokane v. N. P. Ry. Co. 376.  
 Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co. 491.  
 Kindel v. N. Y. N. H. & H. R. R. Co. 555.  
 Monroe Progressive League v. St. L. I. M. & S. Ry. Co. 534.  
 Southern Kansas Millers Commercial Club v. A. T. & S. F. Ry. Co. 604, 605, 607.  
 Wyman, Partridge & Co. v. B. & M. R. R. 577.

## INTOXICATING LIQUORS. See COMMODITIES (Liquors).

## IN-TRANSIT. See DIVERSION; FABRICATION; MILLING IN TRANSIT; STOPPAGE IN TRANSIT; YARDAGE IN TRANSIT.

INTRASTATE RATES. See STATE RATES.

# INVESTIGATION.

The conclusion of the provision "any reasonable ground" leaves the question whether investigation shall result to the legal discretion of the Commission. *Taylor v. M. P. Ry. Co.* 165.

*In re Jurisdiction Over Water Carriers*, 205.

# INVESTMENT.

If the present system of private ownership of railways is to be continued, sufficient inducement must be extended to private investors. *City of Spokane v. N. P. Ry. Co.* 376 (417).

IRON AND PRODUCTS. See COMMODITIES.

# IRON PYRITES.

Imported from Spain. *Naylor & Co. v. L. V. R. R. Co.* 9.

JARS, FRUIT. See COMMODITIES.

JEWELERS' SWEEPINGS. See COMMODITIES.

# JOINT RATE.

The first section gives the shipper a right to a through route and a reasonable rate, but the rate open to him need not be a joint rate, and the mere fact that no joint rate already exists does not lay upon this Commission any absolute requirement to establish one. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* (Concur.) 460 (467).

The through rate on wheat from Idaho Falls, Idaho, to McKinney, Tex., held applicable, under Special Circular No. 6, to a shipment to McKinney from Wooleys Spur, an intermediate point from which no specific through rate had been published. *Williamson v. O. S. L. R. R. Co.* 228.

Complainant asks for reestablishment of joint or through rates on grain and products from all points on the Kansas Southwestern Ry. to all points on the lines of the other defendants. *Midland Mill & Elevator Co. v. Kansas S. W. Ry. Co.* 610.

Complainant is entitled to through routes and joint rates to Milwaukee from points on that part of the C. R. I. & P. Ry. Co. that was formerly the B. C. R. & N. Ry. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460.

Joint through rates should be established and all lines participating in the rate should, in consideration of the long distance covered, abate something from the ordinary local charge. *City of Spokane v. N. P. Ry. Co.* 376 (422).

Defendants voluntarily established a lower joint through rate than the combination rate charged; but the higher rate was not so unreasonable as to warrant an order for reparation. *Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 56.

Fertilizer, Montgomery, Ala., to points in Mississippi voluntarily reduced after complaint challenging such rates had been set for hearing. *Montgomery Freight Bureau v. Western Ry. of Ala.* 199.

Brick, pressed, Collinsville, Ill., to Galveston, Tex., arbitrary of 5 cents to St. Louis, plus through rate of 22 cents to Galveston found unreasonable. *Hydraulic Press Brick Co. v. Vandalia R. R. Co.* 175.

Broom corn, Duncan to Wichita, stored, reconsigned to Seattle at balance of through rate, via Beatrice. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219.

Cross-ties, to longer distance point, less than combination of locals to intermediate point; water competition justifies. *MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329.

A joint through rate higher than the sum of the local rates of the same carriers via the same route found to be unreasonable. *Michigan Buggy Co. v. G. R. & I. Ry. Co.* 297.

**JOINT RATE—Continued.**

None via lines over which shipment moved on account of diversion in transit.  
*Duluth Log Co. v. Minn. & Int. Ry. Co.* 192.

Ineffective because of omission from tariff of one of many carriers in through line.  
*Jones & Sons Co. v. B. & A. R. R. Co. et al.* 226.

Phosphate rock, St. Blaise, Tenn., to Riddlesburg, Pa. *Woodward & Dickerson v. L. & N. R. R. Co.* 170.

**JUNK.**

Old worn-out canvas, bought as junk, should take junk rate. *Channon Co. v. L. S. & M. S. Ry. Co.* 551.

**JURISDICTION.** See also **POWER OF COMMISSION; AUTHORITY.**

Complainant alleged damages by reason of excessive charges; defendant asserted that there was an unpaid balance due it. It was agreed between the parties thereto that the case be submitted to Commission in order that a determination of reasonableness of charge might be had. *Gough & Co. v. Ill. Cent. R. R. Co.* 280 (281).

Water carriers are subject to the law only as to such traffic as is transported under a common control, management, or arrangement with a rail carrier, and as to that traffic not so transported they are exempt from its provisions. *In re Jurisdiction Over Water Carriers*, 205 (211).

When coal is destined for delivery across the main street to that part of Bristol in Tennessee, these shipments are interstate and under the jurisdiction of this Commission. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453 (454).

There can be no doubt as to the jurisdiction of the Commission of any question of discrimination connected with the service of the express companies as carriers. *American Bankers' Assn. v. American Express Co.* 15.

The Commission has jurisdiction, without regard to the amount in controversy, to award damages whenever they arise under the act, excepting in those cases where the act itself names another forum. *Washer Grain Co. v. M. P. Ry. Co.* 147.

Complaints for damages on account of loss resulting from wrong terminal delivery of shipment of perishable fruit not cognizable by Commission. *Blume & Co. v. Wells, Fargo & Co.* 53.

Commission has, under section 6, to award damages for diversion of shipment from route prescribed by the consignor. *Woodward & Dickerson v. L. & N. R. R. Co.* 170 (172).

Commission has no common-law or equity jurisdiction, but only such authority as is prescribed in the act to regulate commerce. *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37 (38).

Where the office of a carrier shall be located, or what hours that office shall be kept open. *American Bankers' Assn. v. American Express Co.* 15 (22).

The Commission has jurisdiction whenever the unreasonableness of the rate is in issue. *Porter v. St. L. & S. F. R. R. Co.* 1 (5).

Coal, Gallup, N. Mex., to El Paso, by one carrier, delivered to second carrier for delivery to consignee in El Paso. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443.

Complainant not subject to act, seeking through route and joint rate. *Crane R. R. Co. v. P. & R. Ry. Co.* 248 (253).

**JURY.**

May review orders of Commission, if resisted by carriers. *Washer Grain Co. v. M. P. Ry. Co.* 147 (154).

**KNOWLEDGE.**

It is contended by complainant that it had no knowledge of what the charges were to be. This we can not assume to be so for the reason that the charges were duly published in the tariffs of the defendant. *Gough v. Ill. Cent. R. R. Co.* 280 (282).

**KRAUT.** See **COMMODITIES**.

**LADDERS.** See **COMMODITIES**.

**LAKE-AND-RAIL RATES.**

Atlantic seaboard territory to Green Bay, via Buffalo and the Lakes. Green Bay Business Men's Assn. *v. B. & O. R. R. Co.* 59.

Competition in grain transportation from Minneapolis to Chicago. Bulte Milling Co. *v. C. & A. R. R. Co.* 351.

**LARD.** See **COMMODITIES**.

**LARD PAILS.** See **COMMODITIES**.

**LEAF TOBACCO.** See **COMMODITIES (Tobacco)**.

**LEGAL RATE.**

The lawful rate, at the time the shipment moved, via the route it traversed was 62 cents per 100 pounds. This lawful rate was never quoted, assessed, or charged upon the shipment, and all rates that were quoted, assessed, or charged were excessive by reason of exceeding this lawful rate in addition to being excessive because unreasonable. *Porter v. St. L. & S. F. R. R. Co.* 1.

The negligence of the defendant caused complainant to pay more than it presumably would have paid, but not more than it was lawfully bound to pay under the tariff then in force. The rate exacted was the only rate lawfully applicable, under the tariffs on file with the Commission. *Folmer & Co. v. G. N. Ry. Co.* 33.

Carriers and shippers must take specific rates and fares provided in tariffs, regardless of any long and short haul clauses, maxima rules, alternative rate or fare provisions, etc., contained in tariffs. *Williamson v. O. S. L. R. R. Co.* 228 (229).

Carriers are required by law to charge their published rate, and when they do so, unless the rate published is unreasonable and thereby unlawful, they entail no liability. *Palmer & Miller v. L. E. & W. R. R. Co.* 107 (108).

It does not seem to be provided in the law that one party to a joint rate and through route may divert freight at the expense of the shipper. *Woodward & Dickerson v. L. & N. R. R. Co.* 170 (174).

Whatever may have been the practice in the past of "meeting the rate," tariffs must now be adhered to. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

**LESS THAN CAR LOAD.** See also **C. L.**

Inflammable oils, delivery restricted to one day in a week; rule found unreasonable and two days a week prescribed. *National Petroleum Assn. v. L. & N. R. R. Co.* 473.

**LETTER COPIERS.** See **COMMODITIES**.

**LIABILITY.** See also **RELEASED RATES**.

The bill of lading or the contract of shipment under which this traffic moves should plainly state the liability assumed. Any other course will inevitably result in giving the shipper in many cases a defective contract. *Wyman, Partridge & Co. v. B. & M. R. R.* 577 (582).

**LIEN.**

The Commission's orders for the payment of money are not enforceable by process, nor do they become a lien upon the property of a defendant. *Washer Grain Co. v. M. P. Ry. Co.* 147.

**LIGHTERAGE.**

Ice, from storehouses on Hudson River to Hoboken, Jersey City, and other points of consumption. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (309).

Floatage includes delivery of car and lading, while lighterage includes delivery only of the lading. *Harlow Lumber Co. v. A. C. L. R. R. Co.* 501 (503).

**LIME.** See **COMMODITIES**.

**LIMESTONE.** See **COMMODITIES.**

**LIMITATION.** See also **INFORMAL COMPLAINT.**

In complaints for recovery of damages caused by unreasonable or unduly discriminatory rates, the cause of action accrues when the payment is made; in any other complaints for recovery of damages for alleged violations of the act to regulate commerce of which this Commission has jurisdiction, the cause of action accrues when the carrier does the unlawful act or fails to do what the law requires.

When Does a Cause of Action Accrue Under the Act to Regulate Commerce, 201.  
Charges paid July 11, 1906. Complaint filed July 11, 1908. Claim for reparation barred, the cause of action having accrued more than two years prior to the time of filing complaint. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443.

Admitted by complainant that more than two years had intervened between the date of payment of charges and the date of presentation of complaint, and, on motion, dismissed. *Pleasant Hill Lumber Co. v. St. L. S. W. Ry. Co.* 532 (533).

All claims, whether arising prior or subsequent to August 28, 1908, are entitled to two years for presentation to the Commission. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235.

Complaint filed July 1, 1908, so that all damages which may have accrued prior to July 1, 1906, are barred by the statute. *Pilant v. A. T. & S. F. Ry. Co.* 178 (181).

*Nicola, Stone & Myers Case*, 14 I. C. C. 199, distinguished, showing one year limitation for claim accruing prior to August 28, 1906, expired midnight August 28, 1907. *Nollenberger v. M. P. Ry. Co.* 595 (597).

A cause of action accrues under the act to regulate commerce on the date the freight charges are paid. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235.

**LIMITED LIABILITY.** See **RELEASED RATES.**

**LIQUORS.** See **COMMODITIES.**

**LIVESTOCK.** See **COMMODITIES.**

**LOADING.**

Ocean rate on wheat generally less than on flour, because wheat can be loaded in bulk from an elevator and can otherwise be handled more economically by the ocean carriers. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (364).

Ladders in official classification territory, rules should be modified so as to provide for shipment of one dozen ladders at actual weight. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370.

Lumber, near New Orleans, for shipment to Texas, Arizona, and Mexico; bunching of cars, demurrage accruing. *American Creosoting Works v. Ill. Cent. R. R. Co.* 160.

Longer time consumed in loading pyrites cinder than iron ore. *Naylor & Co. v. L. V. R. R. Co.* 9 (10).

Plate glass in box car, minimum 5,000 pounds. *Bennett v. M. St. P. & S. Ste. M. Ry. Co.* 301.

**LOCAL RATES.** See also **THROUGH AND LOCAL.**

As the defendant carriers have a right to increase their separate local rates, an order that the joint through rate may not, for a stated period, exceed the sum of the local rates could, by such increase in local rates, be made ineffective. *Michigan Buggy Co. v. G. R. & I. Ry. Co.* 297.

Combination of on cross-ties greater to intermediate point than through rate to longer distance point; water competition at latter justifies. *MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329.

Broom corn to Wichita, stored, reconsigned at balance of through rate from origin to destination plus 5 cents per 100 pounds. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219 (220).

## • LOCAL RATES—Continued.

If carriers maintain through passenger fares made up of the sum of locals they should use the lowest local available. *United States v. B. & O. R. R. Co.* 470 (472).

Sum of less than through rate on shipment of steel tanks, Goshen, Ind., to Sheboygan, Wis. *Lindsay Bros. v. L. S. & M. S. Ry. Co.* 284.

## LOCALITIES.

Anaconda, Mont., to Tacoma, Wash.; cattle, 431, 432.

Appalachia, Va., to Bristol, Tenn.; coal, 453.

Ashland, Tex., to Wakita, Okla.; lumber, 533.

Atchison, Kans.; elevator allowances, 147.

Atkins, Ark., to Briggs, Okla.; lumber, 165.

Atlanta, Tex., to Kansas City and Chicago; canned peaches, 65.

Baltimore, Md.; scalage deductions, grain elevation, 341.

Bancroft, Tex., to Crowley, La.; agricultural implements, 599.

Beatrice, Nebr., to Kenosha, Wis.; automobiles, uncrated, 27.

Black Mountain coal district, Va., to Morristown, Tenn., and other points; coal, 286.

Boston, Mass., to Bristol Ferry, R. I.; express rates, 631.

Brazil, Ind., to Racine, Wis.; clay conduits, 468.

Britton, S. Dak., to Red Wing, Minn.; flaxseed, 47.

Buffalo, N. Y., to points in Pennsylvania and New Jersey; pyrites cinder, 9.

Cataasauqua, Pa.; through routes and joint rates, 248.

Celina, Tex.; milling in transit, 138.

Celina, Ohio, to Johnstown, Pa.; corn, 107.

Chicago and eastern points to Spokane; class and commodity rates, 376.

Chicago, between Detroit and Port Huron; creamery rates, 109.

Collinsville, Ill., to Galveston, Tex.; brick, 175.

Douglas, Ariz., to El Paso, Tex.; scrap iron, 451.

Duncan, Okla., to Seattle, Wash.; broom corn, 219.

Durant, Okla., to Olla, La.; oats, 136.

Dubuque, Iowa, to Sioux Falls, S. Dak.; doors, 602.

East Branch, N. Y., to Weehawken, N. J.; stone, 264.

East Chicago, Ind., to Moline, Ill., iron bars, 277.

East St. Louis, Ill., to Beebe, Ark.; mixed c. l. buggies and wagons, 145.

Eastern territory to Green Bay, Wis.; percentage rates, 59.

Ensley, Ala., to Lagrange, Ga.; coal-tar paving cement, 196.

Fletcher, Okla., to Bovina, Tex.; emigrant's outfit, 1.

Fostoria, Tex., to Melrose, N. Mex.; lumber, 56.

Freeport, Ill., to Wheatland, Pa.; scrap iron and switching charge in Chicago, 478.

Gallup, N. Mex., to El Paso, Tex.; coal, 443.

Gleason, Ark., to Dallas, Tex.; rough-sawed tent pins, 274.

Goshen, Ind., to Sullivan and Sheboygan, Wis.; steel tanks, 284.

Grafton, W. Va., via Willow Creek, Ind., to Kalamazoo, Mich.; coal, 11.

Grand Rapids, Mich., via Milwaukee, Wis., to Houghton, Mich.; plaster, 68.

Granite Falls, Minn., to Chicago; butter and eggs; petition for damages, 334.

Green Bay, Wis., to Pattonsburg, Mo.; vegetables, 584.

Greenville, mine near Ludlow, Colo., to various destinations; reconsignment charge on coal, 546.

Greenville, Miss., to Cedar Rapids, Iowa; box shooks, 436.

Great Lakes, etc.; marine insurance, 577.

Harper, W. Va., to New Haven, Conn.; lumber, 235.

Humboldt, Nebr., to St. Francis, Kans., and Pawnee, Nebr., to St. Francis, Kans.; corn, 324.



## LOCALITIES—Continued.

- Idaho Falls, Idaho, to McKinney, Tex.; wheat, 228.  
 Indianapolis to East St. Louis, and St. Louis, etc.; class and commodity rates, 504.  
 Indianapolis to Ohio River crossings; class and commodity rates, 367.  
 Indianapolis to various points; ladders; fabrication of structural iron and dry-kiln outfits, 370.  
 Janesville, Wis., to Kansas City, Mo., rye flour, 277.  
 Johnstown, Pa.; demurrage, 484.  
 Joliet, Ill., to Milwaukee, Wis.; fire brick, 480.  
 Kalamazoo, Mich., to Argyle and Woodford, Wis.; boilers and engines, 182.  
 Kalamazoo, Mich., to New Glarus and other points in Wisconsin, boilers, 40.  
 Kalamazoo, Mich., to St. Paul, Minn.; vehicles (cutters), 297.  
 Kansas and Missouri to points in Oklahoma; petroleum and products, 42.  
 Kansas City, Kans., to Galveston, Tex.; wheat for export, 499.  
 Kansas City, Mo.; hay, switching charges, 37.  
 Kansas City, Mo.; liquors, refusal to accept shipments C. O. D. 255.  
 Kansas City to Chicago, etc.; walnut veneer, 326.  
 Kansas City, Mo., to Mississippi River points and points east; hay, 70.  
 Kansas points to Kansas City, etc.; grain, 491.  
 Kansas points to Memphis, and Little Rock, Ark.; grain and products, 605.  
 Kansas points to various points in Oklahoma; grain and products, 607.  
 Kansas S. W. Ry. points to various destinations; grain and products, 610.  
 La Harpe, Ill., to Boulder, Colo.; emigrants' movables, 543.  
 Lake Charles, La., to El Paso, Tex.; yellow-pine lumber, 49.  
 Lake City, Ark., to Springfield, Mo.; shingles, 230.  
 Lansing, Mich., to Cedar Rapids, Iowa; beans, 616.  
 Laporte, Minn., to Louisville, Ky.; poles and allowances for car staking, 192.  
 Laporte, Minn., to Poplar Bluff, Mo.; poles and car-stake allowance, 627.  
 Leslie, Ark., to Chicago, Ill.; eggs, 449.  
 Louin, Miss., to Peoria, Ill.; rosin, 25.  
 Ludlow, Colo., to Trinidad, Colo.; coal, divisions of, through rate beyond, 73.  
 Malden, Mo., to Minneapolis, Minn.; cotton linters, 269.  
 Marble Falls, Tex., to St. Louis, Mo.; cedar insulator pins, 167.  
 Martinsburg and Bunker Hill, W. Va., to Philadelphia, Pa., and other points; lime and stone, 620.  
 Menaaha, Wis.; shingles, rebilling, 33.  
 Meridian, Miss., to New Orleans, La.; cotton linters for export, 332.  
 Middlesboro, Ky., to Bristol, Tenn.; coal, 487.  
 Milwaukee from certain points on Rock Island R. R.; corn, rye, and oats, 460.  
 Milwaukee, Wis., to Roswell, N. Mex.; beer, 178.  
 Minneapolis, Minn., to Fremont, Ohio; stoves, 530.  
 Minnesota points to Rhode Island; jeweler's sweepings, 7.  
 Mississippi and other Southern States to various destinations, yellow-pine lumber, 239.  
 Missouri River and east thereof to Denver and from Denver to Utah; class rates, 555.  
 Missouri River points to Atlantic seaboard; flour and grain products, 351.  
 Montgomery, Ala., to points on M. J. & K. C. R. R. Co. north of Newton, Miss., fertilizer, 199.  
 Mount Pleasant and Centerville districts, Tenn., to points in Illinois, Indiana, Ohio, Michigan, New York, and Pennsylvania; phosphate rock, 79.  
 Nampa, Idaho, to Tacoma, Wash.; cattle, 429.  
 New Jersey and Pennsylvania, to various destinations; ice, 305.  
 New Orleans, La.; storage charges—brewers' rice, 280.  
 New Orleans and Atlantic seaboard to Indianapolis, etc.; sugar and coffee, 567.

## LOCALITIES—Continued.

New Orleans, La., to El Paso, Tex.; bananas, 185.  
 New Orleans, La., to Texas, Arizona, and Mexico; creosoted lumber, 160.  
 New York to Chicago; burlap bags, 439.  
 Norfolk, Va., to Annapolis, Md.; ball cartridges and saluting powder, 233.  
 Ogemaw, Ark., to Sodus, La.; sawmill machinery, 532.  
 Oklahoma points to Kansas City, Mo.; wheat, 604.  
 Omaha; return of empty cream cans, 134.  
 Omaha, Nebr., and Council Bluffs, Iowa; elevator allowances, 90.  
 Omaha, Nebr., to Canton, S. Dak.; lumber, 277.  
 Ontario, Oreg., and Nampa, Idaho, to Tacoma, Wash.; cattle, 482.  
 Paola, Kans., to Boonville and Holden, Mo.; petroleum oil, 29.  
 Paola, Kans., to Kansas City, Kans.; petroleum, 245.  
 Pittsburg, Pa.; fruit and vegetables, 53.  
 Pittsburg, Pa., to Newport, R. I.; passengers, 470.  
 Pittsfield, Mass., to Millinocket, Me.; paper-mill machinery, 226.  
 Pulaski, Va., to Edgewater, N. J.; sulphide of iron, 349.  
 Richmond, Va., to Cleveland, Ohio; typewriter, 609.  
 St. Blaise, Tenn., to Riddlesburg, Pa.; phosphate rock, 170.  
 St. Louis, Mo., to Bainbridge, Ga.; class and commodity rates, 586.  
 St. Louis, Mo., to Leadville, Colo.; beer, 595.  
 St. Louis, Mo., etc., to Monroe, La.; class and commodity rates, 534.  
 St. Paul, Minn., to Douglas, N. Dak.; plate glass, 301.  
 San Pedro, Cal., to Los Angeles, Cal.; lumber—yarding-in-transit, 434.  
 Sault Ste. Marie, Mich., to Thiensville, Wis.; cross-ties, 329.  
 Stoughton, Wis., to Passaic, N. J.; leaf tobacco, 618.  
 Vincent, Ark., to Memphis, Tenn.; cotton, 222.  
 Warsaw, N. C., to Chappaqua, N. Y.; lumber, 501.  
 Western Classification territory; rapid roller letter copiers, 260.  
 Wisconsin to Illinois and Iowa; lumber, 427.  
 Worcester, Mass., to Chicago, Ill.; junk, old canvas, 551.

## LOCATION.

To impose upon any point in the territory around St. Louis a blanket rate higher than could be obtained by using the combination on St. Louis would be denying to that point the just benefit of its location. *Hydraulic Press Brick Co. v. Vandalia R. R. Co.* 175 (176).  
 Seattle can command a better rate from eastern territory than Spokane. This is a disadvantage of location under which the city of Spokane rests, and of which it can not justly complain. *City of Spokane v. N. P. Ry. Co.* 376 (419).  
 A water port is entitled to whatever advantage it can obtain through transportation by water, but its location does not entitle it to lower rates by rail. *Darling & Co. v. B. & O. R. R. Co.* 79 (87).  
 Wabeno, by reason of its geographical location and its distance by rail from Chicago and other points reached by defendant's lines in Illinois and Iowa, is entitled to same carload lumber rates as the Wasua group. *Jones Lumber Co. v. C. & N. W. Ry. Co.* 427.  
 Carriers are not required by law, and could not in justice, be required to equalize natural disadvantages such as location, cost of production, and the like. *Black Mountain Coal Land Co. v. So. Ry. Co.*, 286.  
 Consideration must be given to advantages of natural location and development in readjusting rates. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (561).  
 Green Bay, Wis., not at disadvantage in any territory where it might fairly expect to operate. *Green Bay Business Men's Assn. v. B. & O. R. R. Co.* 59 (63).

## LONG HAUL.

There is a material difference between a reasonable amount to be added for additional mileage on a straight-away long haul and a reasonable allowance to be added for an out-of-line haul which involves two and probably three terminal services. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491 (495).

Southern lines regard it as better policy to move phosphate rock south than north, since movement south is largely to fertilizer mills located on their own lines, so that they can obtain not only the haul of the rock in, but also transport the manufactured products out. *Darling & Co. v. B. & O. R. R. Co.* 79 (84).

A carrier has no right to insist that a shipment shall go to the end of its rails if the shipper desires it to be diverted at an intermediate point to another market off its rails. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460.

Corn is shipped to these points for feeding purposes so that the defendants obtain the haul of the grain in and the fattened stock out. *Cooper & Son v. C. B. & Q. R. R. Co.* 324 (325).

## LONG LINE.

A carrier with a long route is not obliged as a matter of law to meet the rate of a short-line competitor; neither is a carrier via a long route obliged as a matter of law to reduce its rate because its short-line competitor reduces a rate which has been the same via both routes. *Commercial Coal Co. v. B. & O. R. R. Co.* 11.

Rate over two lines can not be found unreasonable because a single line, carrying between the same points over a shorter route, publishes a lower rate. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

## LONG AND SHORT HAUL.

On carload of cross-ties, Sault Ste. Marie, Mich., to Thiensville, Wis., there was charged a combination of locals of 20 cents per 100 pounds, whereas at the same time there was in effect a joint through rate of 13 cents to Milwaukee, Thiensville being intermediate. *Held*, That because of dissimilarity of circumstances and conditions at Milwaukee the fourth section is not violated. *MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329.

Rates on petroleum, Paola, Kans., to Boonville and Holden, Mo., higher than from Kansas City, through Paola, to same destinations; *Held*, That in view of dissimilarity in circumstances and conditions the rate adjustment complained of does not violate the fourth section. *Paola Refining Co. v. M. K. & T. Ry. Co.* 29.

Rate on beer, Milwaukee, Wis., to Roswell, N. Mex., was 78 cents per 100 pounds, while the rate to El Paso, Tex., was 60 cents; subsequently the Roswell rate was reduced to 72 cents; *Held*, That the rate from Milwaukee to Roswell, under the circumstances, is not violative of the fourth section. *Pilant v. A. T. & S. F. Ry. Co.* 178.

No conditions would justify the application of a class rate of 11 cents on a shipment of clay conduit from Brazil, Ind., to Racine, Wis., while the same carriers maintained a commodity rate of 6½ cents to Milwaukee, only 20 miles farther distant. *Milwaukee Electric Ry. & L. Co. v. C. M. & St. P. Ry. Co.* 468.

Rates from St. Louis to New Orleans and other Mississippi River points are controlled by water competition, and therefore the fact that such rates are lower than from same points of origin to Monroe does not unjustly discriminate against Monroe. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534.

Carriers may, for the purpose of meeting water competition, make rates lower than would otherwise be justifiable, even to the extent of charging a less rate to the more distant point. *Darling & Co. v. B. & O. R. R. Co.* 79 (87).

Transcontinental rates are lower from the Missouri River and east to Pacific coast than to intermediate interior points; *Held*, that this has been forced by water competition between the Atlantic and Pacific coasts. *City of Spokane v. N. P. Ry. Co.* 376.

**LONG AND SHORT HAUL—Continued.**

Rates on shingles between two intermediate points greater than between longer distance points, the traffic in the latter case passing through the intermediate points. *Keich Manufacturing Co. v. St. L. & S. F. R. R. Co.* 230.

Canned goods, Atlanta, Tex., to Chicago and Kansas City, same as from other points in Texas, some of which involving hauls of not less than 400 miles in excess of those from Atlanta to the destinations in question. *Godfrey & Son v. T. A. & L. Ry. Co.* 65 (67).

Rosin, rate on from Louin, Miss., to Peoria, Ill., more than twice as much as from Laurel, Miss., a point 3 miles farther distant from Peoria. *Central Commercial Co. v. M. J. & K. C. R. R. Co.* 25.

Higher grade commodity for longer haul charged less than return movement of by-product for shorter haul. *Naylor & Co. v. L. V. R. R. Co.* 9 (10).

**LOSS.** See **DAMAGE IN TRANSIT.**

**LUMBER.** See **COMMODITIES.**

**MACHINERY.** See **COMMODITIES.**

**MAINTENANCE OF RATE.** See **PAST RATES.**

**MANUFACTURERS' RATE.**

The manufactured product commonly takes a higher rate than the raw material from which it is made. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

**MARINE INSURANCE.**

Carriers will be required to tender a bill of lading which is consonant with their tariffs in respect of marine insurance on the lakes. *Wyman, Partridge & Co. v. B. & M. R. R.* 577.

**MARKED CAPACITY.** See also **CAR SIZE.**

Defendants collected on 5,000 pounds more than the maximum loading capacity of the car; *Held*, That this was an unreasonable charge. *Rosenbaum Grain Co. v. M. K. & T. Ry. Co.* 499.

Car furnished of greater capacity than ordered, resulting in application of higher minimum. *General Chemical Co. v. N. & W. Ry. Co.* 349.

**MARKET.**

In claiming that as Chicago affords as good a market for grain as does Milwaukee the defendant may therefore lawfully so adjust its rates as to force the grain to Chicago, it overlooks the right of the shipper to choose his own market and to do business where he prefers. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460.

**MARKET COMPETITION.**

Inasmuch as there is no competition whatever between the fertilizer mills in the South and the mills of these complainants, the failure to advance southern rates contemporaneously with the advance of northern rates would not appear to have created any undue discrimination which would make the advances in question unlawful. *Darling & Co. v. B. & O. R. R. Co.* 79 (84).

**MATTRESSES.** See **COMMODITIES.**

**MEASURE OF RATE.**

The unreasonableness of a through rate upon an interstate shipment via a given route can not be determined by a mere comparison therewith of a lower aggregate of rates consisting of a local intrastate rate plus an independent interstate rate based upon a junction through which the carriers have no joint route and no basis of division. *Marble Falls Insulator Pin Co. v. H. & T. C. R. R. Co.* 167.

It is well established that rates are not made with respect of distance alone. Differences in cost of service to the carrier, value of service to the shipper and questions of competition in the selling market should be taken into consideration. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (295).

**MEASURE OF RATE—Continued.**

In determining cost of service, method of determining terminal expense per car, "which is merely an average obtained by dividing the total terminal cost, including a proportion of these fixed charges, by the total number of cars handled" disapproved. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (319).

While it is proper in fixing rates to give consideration to commercial conditions and needs, rates over the same lines, between the same points, but under differing conditions, must be made with some consideration for the difference in the cost of service. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (558).

While a division of a through rate long accepted by a carrier may often be pertinent evidence, it is not a sound final test of the reasonableness of the through rate itself. Nor is the rate per ton per mile the generally accepted basis in this country for making up interstate rates. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

One of the most satisfactory tests of the reasonableness of rates is a comparison with the rates of other carriers operating in the same territory under the same general conditions. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (466).

The Commission can not lend sanction to the idea that a lower rate in effect via one line than via another line is conclusive evidence of the unreasonableness of the higher rate. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

The mere fact that it (a rate) is found in effect, or even that it has continued in effect for a considerable length of time, is not conclusive of its reasonableness. *Darling & Co. v. B. & O. R. R. Co.* 79 (83).

Certain conditions govern classification of freight, including weight per cubic foot, value per cubic foot, risk of breakage, and volume of traffic. *Yawman & Erbe Manufacturing Co. v. A. T. & S. F. Ry. Co.* 260 (262).

The granting of a rebate does not raise a presumption that the lawfully established rate is unreasonable by the amount of the concession. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370 (373).

Measured by cost and value of service, by rates prescribed by state commission, etc., switching charge found unreasonable. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443 (447).

There is no standard by which either the cost of the service or the reasonableness of these rates can be fixed with any certainty. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109 (132).

Cost of service, risk, and volume of traffic urged by defendant as tending to reasonableness of rate at issue. *Barton, Reisinger, Davis Co. v. St. L. I. M. & S. Ry. Co.* 222 (224).

The reasonableness of a reconsignment charge is dependent upon the cost of that service. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 546 (549).

There is no absolute test of a reasonable rate, and the Government has supplied none. *City of Spokane v. N. P. Ry. Co.* 376 (416).

Distance and cost of service considered. *Green Bay Business Men's Assn. v. B. & O. R. R. Co.* 59 (63).

**MEATS.** See **COMMODITIES.**

**MEDICINES.** See **COMMODITIES.**

**"MEETING THE RATE."**

Whatever may have been the practice in the past, tariffs must now be adhered to. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

**MERGER.**

What might perhaps have been proper as between companies operating separate and distinct short lines may become unreasonable and unjust when both are absorbed by a large system which serves an extensive territory. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (292).

METAL COUCHES. See COMMODITIES.

MILK. See COMMODITIES.

MILLING-IN-TRANSIT.

If the milling-in-transit rates over a through route from the Oklahoma wheat fields to points where the flour is consumed are made available to one milling point not on such through route, by giving it a back haul or out-of-line service at reasonable rates, no reason is perceived why the same opportunity should not be accorded to another milling point, even though more distant from such through route, at rates that are relatively reasonable. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138.

MINIMUM RATE.

Bristol Ferry, R. I., minimum per package compared with Fall River, Mass., minimum per package. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631.

MINIMUM WEIGHT. See also CAR SIZE.

Defendant ordered to cease and desist from assessing charges on a minimum weight of 5,000 pounds on a package of plate glass loaded into a box car. *Bennett v. M. St. P. & S. Ste. M. Ry. Co.* 301.

We regard it as improper for carriers to regulate the amount of freight charges by prescribing minima which manifestly can not be loaded. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504 (527).

Assessed by connecting and delivering carriers on shipment of cotton linters taking an "any quantity" rate, two cars being furnished by initial line for one ordered. *Falls & Co. v. C. R. I. & P. Ry. Co.* 269.

Tariff prescribing minimum weight on all shipments of wheat for export from Kansas City to Galveston is unreasonable. *Rosenbaum Grain Co. v. M. K. & T. Ry. Co.* 499.

Since the minimum may properly vary with the capacity of the car we have not in this order established any minimum, leaving that to the discretion of the defendants. *Darling & Co. v. B. & O. R. R. Co.* 79 (88).

Car furnished of greater capacity than ordered, resulting in application of higher minimum. *General Chemical Co. v. N. & W. Ry. Co.* 349.

Prepayment on basis of; actual weight afterwards ascertained and charges assessed thereon. *Porter v. St. L. & S. F. R. R. Co.* 1 (2).

Water competition may justify a difference in. *City of Spokane v. N. P. Ry. Co.* 376.

Long ladders, one dozen, minimum 1,800. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370.

MINISTERS.

Who are entitled to free transportation. *In re Passes to Clergymen, etc.* 45.

MISROUTING. See also ROUTING.

Through failure of the C. & O. to forward carload of lumber consigned to New Haven via Harlem River, as specifically routed by shipper, complainant was deprived of alleged privilege of reconsignment without extra charge; *Held*, That since provision therefor was not filed with the Commission, this reconsigning practice can not afford basis for reparation. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235.

The defendant alone was responsible for the misrouting of the shipment through a junction carrying a higher rate than was available through another junction, and must therefore bear the entire burden of the mistake. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219.

Upon complaint asking damages for the excess charged caused by misrouting; *Held*, That this Commission has jurisdiction to award damages for diversion of shipments under such circumstances, and that complainant should be awarded damages. *Woodward & Dickerson v. L. & N. R. R. Co.* 170.

**MISROUTING—Continued.**

While defendants transported the shipment over the lines named by complainant, they did not carry it via the cheapest route available over the lines specified. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 627.

Petition for reparation based on alleged misrouting of a carload of lumber from Ashland, Tex., to Wakita, Okla., dismissed because of failure of complainant to appear at the hearing. *Wakita Coal & Lumber Co. v. A. T. & S. F. Ry. Co.* 533. Delivering line did not concur in rate published under which shipment moved, resulting in overcharge. Concurrence filed subsequently, and reparation awarded. *Grand Rapids Plaster Co. v. P. M. R. R. Co.* 68.

Perishable fruit, resulting in damage on account of delivery at wrong terminal in Pittsburgh. *Blume & Co. v. Wells, Fargo & Co.* 53 (54).

Agent of initial carrier, to route over which no through rate existed. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 192.

Routing specified in bill of lading; agent failed to note on billing. *Folmer & Co. v. G. N. Ry. Co.* 33 (34).

**MISQUOTATION. See ERROR.****MISTAKE. See ERROR.****MIXED CARLOADS.**

On complaint challenging the reasonableness of the class rate of 73 cents per 100 pounds on a mixed carload of buggies and wagons from East St. Louis, Ill., to Beebe, Ark.; *Held*, That the rate was excessive and ought not to have exceeded the commodity rate of 39 cents per 100 pounds presently to be established by the defendant. *Parlin & Orendorff v. St. L. I. M. & So. Ry. Co.* 145.

Water competition may justify a difference in the right of combining different commodities at the carload rate. *City of Spokane v. N. P. Ry. Co.* 376.

Fuel wood in consignment of emigrant movables. *Place v. T. P. & W. Ry. Co.* 543.

**MIXED TRAINS.**

Cream carried in. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109 (129).

**MOLASSES. See COMMODITIES.****MONEY ORDERS.**

Issued by express companies in competition with banks. *American Bankers' Assn. v. American Express Co.* 15 (18).

**NATURAL ICE.**

Competing with artificial ice. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (311).

**NEGLIGENCE. See ERROR.****NET EARNINGS. See EARNINGS.****NORTHERN PACIFIC RAILWAY COMPANY.**

Earnings in recent years have been excessive; considered in the establishment of rates. *City of Spokane v. N. P. Ry. Co.* 376 (418).

**OATS. See COMMODITIES.****OFFICE CLOSING.**

What hours the office of a carrier shall be kept open hardly seems to be within the jurisdiction of this Commission. *American Bankers' Assn. v. American Express Co.* 15 (22).

**OFF-SET.**

Inasmuch as the Commission is without authority to adjudicate the claim of a railroad company against a shipper, it can not consider the counterclaim of defendant. *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37.

Claim for overcharge and undercharge submitted by agreement. *Gough & Co. v. Ill. Cent. R. R. Co.* 280 (281).

**OIL.** See **COMMODITIES** (Petroleum).

**OKLAHOMA.**

Possesses great oil fields, but is dependent on Kansas for refined oil. *State of Oklahoma v. C. R. I. & P. Ry. Co.* 42.

**ORDER.**

The Commission's order for the payment of money does not have the effect of an order, decree, or judgment of a court; nor are such orders enforceable by process; nor do they become liens upon the property of a defendant. *Washer Grain Co. v. M. P. Ry. Co.* 147.

No order can be entered by the Commission affecting a carrier's rates or regulations except after such carrier has been given a full and fair opportunity to be heard. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (557).

Reparation granted on shipments of cottonwood box shooks under through rate which exceeded combination of locals, but no order entered reducing rate. *Holley Matthews v. Y. & M. V. R. R. Co.* 436.

**ORIGIN.** See **IN AND OUT.**

**OUT-OF-LINE.** See also **BACK HAUL.**

There is a material difference between a reasonable amount to be added for additional mileage on a straight-away long haul and a reasonable allowance to be added for an out-of-line haul which involves two and probably three terminal services. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491 (495).

**OVERCHARGE.** See also **REPARATION.**

None resulting from act of negligence which deprives shipper of enjoyment of unlawful rate. *Folmer & Co. v. G. N. Ry. Co.* 33.

Not paid, jurisdiction of. *Gough & Co. v. Ill. Cent. R. R. Co.* 280 (281).

**OWNERSHIP.**

Bananas, transferred to Fruit Dispatch Co. upon arrival at New Orleans. *Payne v. M. L. & T. R. R. & S. S. Co.* 185 (186).

**PACKAGE RATE.**

Bristol Ferry, R. I., minimum per package compared with Fall River, Mass., minimum per package. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631.

**PAILS.** See **COMMODITIES.**

**PAINT.** See **COMMODITIES.**

**PANAMA CANAL.**

Competition, especially in view of the approaching completion of the Panama Canal, must be a dominant factor in determining both the present rates and the future policy of transcontinental lines. *City of Spokane v. N. P. Ry. Co.* 376 (387).

**PAPER, BUILDING.** See **COMMODITIES** (Building paper).

**PAPER BAGS.** See **COMMODITIES.**

**PAPER MILL MACHINERY.** See **COMMODITIES.**

**PARTY.**

The Commission must deal with the question from the standpoint of the lawful tariff rates. The act prohibits the dismissal of any complaint because it is not shown that the complainant was damaged. *Indianapolis Freight Bureau v. P. R. R. Co.* 567 (571).

Complainant neither consignor nor consignee, but he bore burden of any charge over and above the reasonable rate, result being that he actually sustained the loss claimed. *Lindsay v. G. R. & I. Ry. Co.* 182 (183).

Charges paid by consignee, but billed back against consignor, who is therefore properly the moving party in this proceeding. *Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 274.



## PARTY—Continued.

No order can properly be entered at this time with respect to the eastern proportionals of grain rates, as the eastern carriers have not been heard. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (366).

We can not order change in classification rule, except as it applies to defendant. *Bennett v. M. St. P. & S. Ste. M. Ry. Co.* 301 (303).

## PASSENGERS.

There appears to be no difference in principle between passengers and freight, so far as comparisons between combinations of local rates and through rates are concerned. *United States v. B. & O. R. R. Co.* 470 (471).

## PASSES.

Ministers engaged in theological seminaries, or other work religious in character, may be accorded special transportation privileges. *In re Passes to Clergymen*, 45 (46).

## PAST RATES. See also INDUSTRIAL RATES.

Where rates have been established by carriers in good faith and acquiesced in by shippers without protest, this Commission will not award reparation, even though the rate is reduced, unless it clearly appears that the rates paid in the past have been excessive. *Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co.* 326 (328).

It has often been said by the Commission that the voluntary maintenance of a rate for a considerable period was in the nature of an admission that the rate was reasonable, which must be given great weight in determining that question unless explained. *Darling & Co. v. B. & O. R. R. Co.* 79 (80).

Where complainant sought to disturb a rate adjustment of long standing, he should take upon himself the burden of establishing clearly the necessity for an investigation and the reasonableness of its demand. *Taylor v. M. P. Ry. Co.* 165 (166).

The voluntary reduction of a rate does not carry with it a conclusive presumption that the prior rate was unjust or unreasonable. *Commercial Coal Co. v. B. & O. R. R. Co.* 11 (14).

The published rates during that period were often modified by special tariffs and open contracts, and it will be found that the average rates were lower than the present proportionals. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (363).

While a division of a through rate long accepted by a carrier may often be pertinent evidence, it is not a sound final test of the reasonableness of the through rate itself. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

Unreasonable rates or undue and unjust discrimination should be corrected, even if long-standing adjustments must be disturbed. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491 (498).

Hay, Kansas City, Mo., to Mississippi River points and points east; class rates should not have exceeded proportional commodity rates previously in effect. *North Bros. v. C. M. & St. P. Ry. Co.* 70.

This Commission has often held that the long maintenance of a given rate is an admission of the reasonableness of that rate. *Green Bay Business Men's Assn. v. B. & O. R. R. Co.* 59.

Where particular industry has grown up under rates voluntarily established, these rates can not be advanced without considering the effect upon that industry. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109.

This Commission can not undertake by its orders to ratify the agreement of the parties as to past or future rates. *Holley Matthews Manufacturing Co. v. Y. & M. V. R. R. Co.* 436 (437).

Stone, rate voluntarily maintained for a number of years, advance not justified.

Shippers' & Receivers' Bureau of Newark *v. N. Y. O. & W. Ry. Co.* 264 (265).

State rates voluntarily established reduced by state commission. *Paola Refining Co. v. M. K. & T. Ry. Co.* 29 (31).

**PAST RATES—Continued.**

Rate has been in effect a number of years, and there can be no doubt that complainant has made its contracts with public on that basis. *Pilant v. A. T. & S. F. Ry. Co.* 178 (181).

Voluntarily established many years ago presumed to have been remunerative.

Board of Mayor & Aldermen *v. V. & S. W. Ry. Co.* 453 (458).

Free back-haul service once allowed. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138 (140).

Ice, established to foster infant industry. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (309).

**PAVING CEMENT.** See **COMMODITIES**.

**PEACHES.** See **COMMODITIES** (Canned goods).

**PEAS, CANNED.** See **COMMODITIES**.

**PELTS.** See **COMMODITIES**.

**PERCENTAGE RATES.**

Rates from eastern territory to Green Bay, Wis., may properly be higher than the Chicago scale. The basis now in effect, which is about 107 per cent of Chicago, not found unlawful. *Green Bay Business Men's Assn. v. B. & O. R. R. Co.* 59.

**PERISHABLE GOODS.** See **COMMODITIES**.

**PERSONALITY OF CONSIGNEE.** See **CONSIGNEE**.

**PETROLEUM.** See **COMMODITIES**.

**PHOSPHATE ROCK.** See **COMMODITIES**.

**PHYSICAL OPERATION.**

The rule enforced by defendant restricting the receipt and shipment of L. C. L. lots of coal oil and products of petroleum to one day in each week subjects complainants to unreasonable prejudice. Any rule which restricts shipments in question to less than two days in any week is unreasonable, and the days selected should be separated by at least two intervening days. *National Petroleum Assn. v. L. & N. R. R. Co.* 473.

**PICKLES.** See **COMMODITIES**.

**PICK-UP.**

Free at Fall River, not at Bristol Ferry, R. I.; circumstances justify discrimination. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631 (634).

**PITCH.** See **COMMODITIES**.

**PLASTER.** See **COMMODITIES**.

**PLATE GLASS.** See **COMMODITIES**.

**PLEADINGS.** See **PRACTICE; PROCEDURE**.

It is always best, in all proceedings before the Commission, for the complainant to state his whole case clearly and fully, and if he claims to have suffered damages, to state them. *Morse Produce Co. v. C. M. & St. P. Ry. Co.* 334 (338).

The Commission is an administrative body created to effect substantial justice in the matters under its control, and is not bound or limited by the strict rules of pleading. *Nollenberger v. M. P. Ry. Co.* 595 (598).

Mere defects of, should not control decision. *Crane R. R. Co. v. P. & R. Ry. Co.* 248 (253).

**PLOW POINTS.** See **COMMODITIES**.

**POLES.** See **COMMODITIES**.

## POTENTIAL COMPETITION.

Competition eliminated by low rail rates, but any increase in rail rates sufficient to induce establishment of additional steamer lines would transform the diminished but strongly potential water competition into augmented active water competition, which, once established, must continue. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (539).

Growing out of former competition on the river, the custom was long ago established and has since been followed of making rates from points like New Orleans and Chicago the same to each of the Ohio River crossings. *Indianapolis Freight Bureau v. P. R. R. Co.* 567 (569).

Railroad can not set up an imaginary water competition. But where a water competition exists that could readily take all the tonnage offered, no reason why rail line may not meet the competition. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (359).

## POWDER. See COMMODITIES.

## POWER OF COMMISSION. See AUTHORITY; JURISDICTION.

Act confers upon Commission power and authority to enter orders only with respect to rates and practices of carriers; as to all claims that may arise out of failure of carriers to carry out their contracts of transportation promptly, and safely and properly perform their duties as common carriers, the Commission is without authority to afford redress. *Blume & Co. v. Wells, Fargo & Co.* 53 (54).

The power of the Federal Government to regulate interstate commerce is too well established to be open to question, and all local regulations, private contracts, terms of franchises, or charters, must give way when they conflict with federal regulation duly prescribed by the Congress. *American Bankers' Association v. American Express Company* 15 (21).

We are authorized to reduce a rate, or to modify a rule or practice which affects a rate, only after full hearing upon complaint, and no order can be entered by the Commission affecting a carrier's rates or regulations except after such carrier has been given a full and fair opportunity to be heard. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (557).

The Commission is authorized to award reparation to any person or persons found to be damaged by any common carrier subject to the provisions of the act, for a violation thereof. *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37 (39).

Commission without authority to enforce compliance by carriers with any duties except those prescribed by the act; for the enforcement of duties not so prescribed appropriate remedy must be sought in the courts. *Royal Brewing Co. v. Adams Express Co.* 255 (256).

Where Commission finds published rate to have been unreasonable, it may award reparation by the difference between what was exacted and what should reasonably have been paid. *American Refractories Co. v. E. J. & E. R. R. Co.* 480.

Ample to declare rates and rules set forth in tariff schedules unjust or unreasonable \* \* \* and when rate has been found unreasonable, and reasonable rate has been established, to make reparation. *Morse Produce Co. v. C. M. & St. P. Ry. Co.* 334 (337).

In *Morse Produce Co.* (15 I. C. C. 334) the power to award reparation where the rate charged was in accordance with the tariff was considered. *Farley & Loetscher Manufacturing Co. v. C. M. & St. P. Ry. Co.* 602 (603).

Not within authority or power of Commission to remove discrimination except through reduction in rates, which necessarily operates to reduce revenues. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (560).

To award damages is limited to such cases as arise out of a violation of the act. *Woodward & Dickerson v. L. & N. R. R. Co.* 170 (172).

**POWER OF COMMISSION—Continued.**

We have no authority to order an advance in rates. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491 (497).

No holding of this Commission can render lawful that which is of itself unlawful. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (94).

The Commission has no authority to prescribe a minimum rate. *Kent & Co. v. N. Y. C. & H. R. R. Co.* 439 (442).

**POWER OF CONGRESS.**

Traffic wholly by water is not subject to the act, for the reason that Congress did not in that statute exercise its admitted authority over interstate transportation by water. *In re Jurisdiction Over Water Carriers*, 205 (208).

**PRACTICE.** See also **PLEADING; PROCEDURE.**

*Held*, upon defendants' motion to dismiss complaint and complainants' request for subpoena duces tecum, the motion to dismiss the complaint is denied. The request for subpoena is also denied. The Commission shall, therefore, unless advised by complainants of their desire to dismiss this proceeding, set it down in due time for hearing of further testimony. *American Bankers' Assn. v. American Express Co.* 15.

Return to certificate holder of actual grain that went into elevator, with dirt taken out, does not affect rates; but to give enough grain to take the place of dirt, etc., does affect rates. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341 (347).

By stipulation, between complainant and defendant, case submitted on pleadings, the filing of briefs and hearing of arguments being waived. *Red Wing Linseed Co. v. C. M. & St. P. Ry. Co.* 47 (48).

**PREFERENCE.** See also **ADVANTAGE; DISCRIMINATION.**

Where the same carrier serves two districts which are in substantially similar circumstances and conditions, the serving carrier can not lawfully prefer one in any manner whatsoever. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286.

The operation of a rule that inflammable oils will be delivered but one day in a week unduly prefers large shippers with tank stations from which they make deliveries by wagon. *National Petroleum Assn. v. L. & N. R. R. Co.* 473 (476).

Against mines of complainant, in favor of Victor Fuel Co. *Cedar Hill Coal & Coke Co. v. A. T. & S. F. Ry. Co.* 73.

**PRESSED BRICK.** See **COMMODITIES.****PREVIOUS HAUL.** See **IN-AND-OUT; LONG HAUL.****PRIMARY MARKET.**

The fact that the Rock Island system reaches other primary grain markets may fairly be said to give it certain equities in the adjustment of the divisions of any through rates that it may establish under our order. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (467).

**PRIVILEGE.**

A shipper can not be deprived through a carrier's negligence of any lawful privilege offered by another carrier, but such privilege must itself be not only one which the carrier may lawfully allow, but it must also be duly established and filed with the Commission. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235.

The privilege embodied in a separate storage and reconsignment tariff of one carrier can not be availed of under a joint tariff to which that carrier is a party, unless the tariff by express reference to the former so provides. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219.

Mixing carloads or whatever privilege of this sort is accorded to one locality should be accorded to the other, served under the same circumstances. Water competition may justify differences. *City of Spokane v. N. P. Ry. Co.* 376 (389).

**PRIVILEGE—Continued.**

The holding storing, unloading and reloading, subject to rebilling and reconsignment under proportional rate, was a privilege and service that required publication in a tariff to be lawful. *Folmer & Co. v. G. N. Ry. Co.* 33.

We can not award damages because a carrier has ceased to grant unpublished privileges which amounted to nothing less than rebates from the tariff rates. *National Lumber Co. v. St. P. L. A. & S. L. R. R. Co.* 434 (435).

**PROCEDURE. See also PLEADING; PRACTICE.**

It is not the proper course of procedure for complainants to file complaint and proceed no further. Some obligation rests upon complainant who seeks reparation to prosecute his case with due diligence. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (600).

**T**he being primarily an application for reparation, Commission could make no order awarding damages in the absence of proof on the part of complainant of the extent of his injury. *Taylor v. M. P. Ry. Co.* 165.

**PROFIT.**

Coal is sold on close margin, and 10 cents per ton as an additional charge may become a serious handicap to successful business operations. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (292).

**PROHIBITION.**

Communities restricting sale of liquor constantly in litigation with express companies. *Royal Brewing Co. v. Adams Express Co.* 255 (257).

**PROHIBITORY RATES.**

There is no warrant in law for the maintenance of a rate or rule for the purpose of restricting the movement of a certain class of traffic because it is unattractive to carriers. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370 (373). A carrier has no right to insist that a shipment shall go to the end of its rails if the shipper desires it to be diverted at an intermediate point to another market off its rails. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460.

**PROPORTIONALS. See DIVISIONS.****PROPORTIONAL RATES.**

The circumstances and conditions surrounding the transportation of flour through Chicago from Minneapolis to the seaboard for export or domestic consumption are substantially dissimilar to those surrounding the traffic through Chicago from Missouri River points, in that the lower proportional rates from Minneapolis to Chicago are the direct result of the competition of lake and rail routes. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

There is no uniform percentage relationship between local and proportional rates, the proportional rates from one point being made with relation to those from a competitive point to the same markets. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504 (511).

Class rates on hay from Kansas City, Mo., to Mississippi River points and points east should not have exceeded proportional commodity rates previously in effect. *North Bros. v. C. M. & St. P. Ry. Co.* 70.

Storage charges on rice, stored at wharves of railway company, transported therefrom on proportional import rate, not unreasonable. *Gough v. Ill. Cent. R. R. Co.* 280 (282).

Class and commodity rates, Indianapolis to Ohio River crossings destined to southeastern territory. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 367.

**PROSPERITY.**

As the rates of these defendants ought not to be fixed altogether with respect to the recent years of prosperity, so neither should they be established upon the basis of this year of adverse conditions. *City of Spokane v. N. P. Ry. Co.* 376 (418).

## PROTEST.

If it were shown that complainant protested against the setting in of too many cars at one time, and its voice and protest had been ignored, there might be room to find that the demurrage charges resulting were unreasonable. *American Re-soring Works v. Ill. Cent. R. R. Co.* 160.

It is not necessary that freight charges shall have been paid under protest in order to maintain a petition before the Commission for the recovery of excessive charges. *Nollenberger v. M. P. Ry. Co.* 595 (596).

## PUBLIC INTEREST.

The only duty of the Commission in this case is to establish reasonable rates from eastern points of origin to Spokane, and in so doing it can only act upon those rates specifically called to its attention, although it must have in mind the effect upon the revenues of these companies of resulting reductions upon other commodities and at other points than Spokane. *City of Spokane v. N. P. Ry. Co.* 376.

Proceedings before Commission given wide publicity, and any interested carriers are given opportunity to defend the rate or provision in a classification, either by intervention or by request of original defendant that such carriers be made defendants. *Bennett v. M. St. P. & S. Ste. M. Ry. Co.* 301 (303).

In determining what is the "public interest" this Commission should have regard to the carrier as well as the shipper, and should not permit the whim of one to offset the substantial advantage of the other. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co. (Concur.)* 460 (467).

Any order, the tendency of which might be to require the carriers to raise their rates on Minneapolis flour to the seaboard, might bring disaster to the great milling industries located there. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (361).

While railroad is competent to demand an order establishing through routes and rates with its connections, its right to such order is to be tested by various considerations, including needs and convenience of community which it seeks to serve. *Crane R. R. Co. v. P. & R. Ry. Co.* 248 (254).

Rates which discriminate against one locality on a particular road can not be justified on the ground that they are part of a general scheme adopted by several roads entering the same territory. *Black Mountain Coal Land Coal Co. v. So. Ry. Co.* 286 (294).

Justice can not be done by prescribing an adjustment which might serve to satisfy complaint in this case if effect of it is to impose upon some other persons or localities the burden that is lifted from the complainant herein. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (560).

We must, in the establishment of these rates on phosphate rock, consider the interest of the mine owner, who is not party as such, as well as that of the manufacturer. *Darling & Co. v. B. & O. R. R. Co.* 79 (82).

Question at issue may be more important than now anticipated. Ruling therefore confined to case in hand and based upon special facts disclosed by record. *Falls & Co. v. C. R. I. & P. Ry. Co.* 269 (272).

This rate on brick is not a thing which concerns this complainant alone, but is rather a matter of general public importance. *Hydraulic Press Brick Co. v. Vandalia R. R. Co.* 175 (176).

## PUBLIC POLICY.

Complainants' suggestion that the flour-milling industry of this country can be fostered by an order requiring carriers to the seaboard to maintain a lower rate on flour than on wheat involves a matter of national policy beyond the authority of the Commission to adopt. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

**PUBLICATION.** See also **TARIFFS.**

All tariffs showing rates, fares, and charges and all privileges or facilities which in anywise change or affect rates or the value of the service rendered, must be published and filed. The holding, storing, unloading, and reloading of shingles was such a privilege that required publication to be lawful. *Folmer & Co. v. G. N. Ry. Co.* 33 (36).

**PYRITES CINDER.** See **COMMODITIES.****QUOTATION.** See **ERROR.****RAIL AND WATER.**

Competition of, in transportation of grain from Minneapolis to Chicago. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

**RANGES AND STOVES.** See **COMMODITIES.**

**RATE.** See also **ADJUSTMENT; ADVANCE; ANY-QUANTITY; ARBITRARY; BASING RATE; CLASS AND COMMODITY; COMPARATIVE; COMPETITIVE; DIFFERENTIAL; EQUALIZING; EXPRESS; FIXING RATES; FUTURE RATES; IMPORT RATES; INDUSTRIAL RATES; JOINT RATE; LEGAL RATE; LOCAL; MANUFACTURERS' RATE; MINIMUM RATE; PACKAGE RATE; PAST RATE; PERCENTAGE RATE; PROHIBITORY RATE; PROPORTIONAL RATES; REASONABLE RATES; RELATIVE RATES; RELEASED RATE; SCALE RATE; SHIPSIDE; STATE RATE; THROUGH AND LOCAL; THROUGH RATE; TRANSCONTINENTAL RATES; UNREASONABLE RATES.**

"Scalage deductions," based on estimate of foreign matter lost in elevation, can not be said to affect rates; but to give to certificate holder enough grain to take the place of dirt, etc., is a practice affecting rates. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341 (347).

**RAW MATERIAL.**

The rate on bags ought to be somewhat higher than upon the burlaps, but there is no theory upon which the carriers could justly establish and this Commission approve a rate upon burlap bags twice as great as that upon the raw product. *Kent Co. v. N. Y. C. & H. R. R. Co.* 439 (441).

The manufactured product commonly takes a higher rate than the raw material from which it is made. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

**REASONABLE RATES.**

The rate must be reasonable with respect to the service actually performed and not with respect to the service that could be performed and the revenue that could be earned if the shipper permitted the carrier to select a market for him. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (466).

Before the Commission makes an order for reparation or establishes a rate for the future it must have some opinion of its own upon the reasonableness of the rate involved. *Holley Matthews Manufacturing Co. v. Y. & M. V. R. R. Co.* 436 (437).

No conclusive presumption that a rate reasonable to-day was reasonable a year before or a day before, since reasonable rates vary from time to time, and some point of division must be found. *Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co.* 326 (328).

The rate might be reduced, but it would be unjust to compel defendants to receive less than a reasonable charge for the transportation. *Kent Co. v. N. Y. C. & H. R. R. Co.* 439 (441).

If being authorized to impose for its services a reasonable rate, it (railroad) in fact imposes one that is excessive, it is answerable to the Government. *City of Spokane v. N. P. Ry. Co.* 376 (414).

Jurisdiction of Commission to establish settled by *Abilene case*. *Washer Grain Co. v. M. P. Ry. Co.* 147.

## REBATES.

Ownership by shipper of rail line which serves that shipper calls for closest scrutiny to ascertain whether, through divisions or allowances, rebates are made to the shipping owner. *Crane R. R. Co. v. P. & R. Ry. Co.* 248 (253).

We can not award damages because a carrier has ceased to grant unpublished privileges which amounted to nothing less than rebates from the tariff rates. *National Lumber Co. v. St. P. L. A. & S. L. R. R. Co.* 434 (435).

The granting of a rebate does not raise a presumption that the lawfully established rate is unreasonable by the amount of the concession. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370 (373).

REBILLING. See RECONSIGNMENT.

## RECEIPT.

For empty cream cans returned free. *Fairmont Creamery Co. v. Pacific Express Co.* 134.

## RECONSIGNMENT.

The reasonableness of a reconsignment charge is dependent upon the cost of that service. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 546 (549).

Privilege not filed with Commission, can not afford basis for reparation. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235.

Shingles from Pacific Coast to Menasha, Wis., forwarded to points beyond Chicago. *Folmer & Co. v. G. N. Ry. Co.* 33.

Affter storage-in-transit, at balance of through rate. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219.

## REFUSAL.

Consignee refused to accept shipment, which was then sold to pay freight, demurrage, etc. *Porter v. St. L. & S. F. R. R. Co.* 1 (2).

## REGULATION.

The power of the Federal Government to regulate interstate commerce is too well established to be open to question. *American Bankers' Ass'n v. American Express Co.* 15 (21).

If any government tribunal is to do justice between the railway and the public, its supervisions must be continuous and not spasmodic. *City of Spokane v. N. P. Ry. Co.* 376 (416).

Main purpose of act was to regulate transportation by railroad; regulation of water lines was merely incidental and collateral. *In re Jurisdiction Over Water Carriers*, 205 (207).

## REHEARING.

Reparation claimed, under decision in former case. *Morse Produce Co. v. C. M. & St. P. Ry. Co.* 334.

## RELATIVE RATES. See also COMPARATIVE RATES.

Contention that rate on bituminous coal from Middlesboro, Ky., to Bristol, Tenn., is discriminatory when compared with rate for a haul of the same distance to Chattanooga, Tenn., is not sustained, there being a dissimilarity in the circumstances and conditions at Chattanooga that justifies a lower rate at that point than to Bristol. *Board of Mayor & Aldermen v. So. Ry. Co.* 487.

A less rate is charged from Celina to the same destination point over other routes. It is well settled that this fact, taken alone in the absence of any other evidence, does not establish that the rate complained of is unreasonable. *Palmer & Miller v. L. E. & W. R. R. Co.* 107 (108).

One of the most satisfactory tests of the reasonableness of rates is a comparison with the rates of other carriers operating in the same territory under the same general conditions. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460 (466).



## RELATIVE RATES—Continued.

Proportional grain rates applied between the rivers and to Chicago for export compared with the proportional rates from Minneapolis to Chicago for export. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

Before we can conclude that the rate on phosphate rock is too high, because it is higher than some other rate named, we must know that the rate selected as the standard of comparison is itself reasonable. *Darling & Co. v. B. & O. R. R. Co.* 79 (82).

While recognizing the differences in competitive conditions as between Indianapolis and Chicago, the disparities between existing rates from these respective points of origin are too great on some commodities. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504.

The question involved is the alleged unjust discrimination against Bainbridge and undue preference in favor of Eufaula. *Held*, That the circumstances and conditions obtaining at Eufaula are materially different from those surrounding Bainbridge. *Bainbridge Board of Trade v. L. H. & St. L. Ry. Co.* 586.

Every locality competing in a common market is entitled to rates which are relatively reasonable and just in comparison with rates from other localities served by the same carrier. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (294).

Express charge from Boston, Mass., to Bristol Ferry, R. I., compared with charge from Boston to Fall River, Mass.; and Bristol Ferry minimum per package compared with Fall River minimum per package. *Phillips v. N. Y. & B. Deep. Ex. Co.* 631.

In determining rates between two points neither that railroad which can afford to handle traffic at the lowest rate nor that whose necessities might justify the highest rate should be exclusively considered. *City of Spokane v. N. P. Ry. Co.* 376.

The fact that it (a rate) does not cross a state line is no reason why it may not be considered when an interstate rate over the same line and for substantially the same distance is under examination. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453 (459).

The Commission can not lend sanction to the idea that a lower rate in effect via one line than via another line is conclusive evidence of the unreasonableness of the higher rate. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

Combination of local state rate plus independent interstate rate no basis of comparison as to reasonableness of through interstate rate. *Marble Falls Insulator Co. v. H. & T. C. R. R. Co.* 167.

The adjustment of a group of rates as a whole might be just and reasonable, even though each rate might not of itself be just and reasonable. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (538).

The present adjustment of rates is discriminatory against Denver, in favor of Kansas City and other Missouri River crossings. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555.

On sugar and coffee, New Orleans and Atlantic seaboard to Indianapolis and to St. Louis and Ohio River crossings. *Indianapolis Freight Bureau v. P. R. R. Co.* 567.

Cotton, other points to Memphis than from Vincent, Ark. *Barton, Reisinger, Davis Co. v. St. L. I. M. & S. Ry. Co.* 222 (225).

Petroleum and its products, rates on, complained of, generally exceed rates charged for like hauls in other parts of the country. *State of Oklahoma v. C. R. I. & P. Ry. Co.* 42 (43).

Green Bay, Wis., compared with Sheboygan, Manitowoc, Kewaunee, and Menominee. *Green Bay Business Men's Assn. v. B. & O. R. R. Co.* 59.

State and interstate rates voluntarily made the same. *American Cigar Co. v. C. M. & St. P. Ry. Co.* 618.

**RELATIVE RATES—Continued.**

State and interstate lines to same points. *Paola Refining Co. v. M. K. & T. Ry. Co.* 29.

Walnut veneer, Kansas City to Chicago compared with those from Cairo and Baltimore to Chicago. *Penrod Walnut and Veneer Co. v. C. B. & Q. R. R. Co.* 326 (327).

**RELEASED RATE.**

Defendant's rate, value limited, was 30 cents per 100 pounds. Complainant requested lowest rate. Defendant assessed unreleased 46-cent rate. Upon complaint questioning application of 46-cent rate and asking for reparation; *Held*, That it was the duty of carrier's agent to apply to shipment lower of the two rates. *Salomon Bros. & Co. v. N. O. & N. E. R. R. Co.* 332.

Jewelers' sweepings. *Rentz Bros. v. C. B. & Q. R. R. Co.* 7.

**RELIGIOUS PERSONS. See MINISTERS.****REPARATION. See also COMPROMISE; LIMITATION; POWER OF COMMISSION.**

Where carrier reduces rate, it does not follow that reparation will be granted for that reason alone.

*Foster Lumber Co. v. A. T. & S. F. Ry. Co.* 56.

*Harlow Lumber Co. v. A. C. L. R. R. Co.* 501 (503).

*Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

*Mose Smith & Co. v. Mo. & N. Ark. R. R. Co.* 449 (450).

*Pilant v. A. T. & S. F. Ry. Co.* 178.

Carriers at fault in misrouting are liable for damages represented by higher charges than would have been lawfully assessable had the misrouting not occurred, and we do not adopt defendant's contention that liability attaches for such damage only as can be reasonably seen or anticipated. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235 (238).

It must not be understood that whenever Commission reduces a rate it necessarily follows that it will award reparation upon the basis of the rate established for two years preceding the filing of the petition. *Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co.* 326 (328).

The defendant has been guilty of an undue discrimination against the complainants, for which they are entitled to recover as damages the difference between what has been paid to their competitors and to them. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (102).

The duty of carrier is to charge and collect the lawful rate, and when more is collected, the excess should be refunded, and when less, the deficiency should be collected. *In re* When does a Cause of Action Accrue, 201 (204).

The Commission is authorized to award reparation to any person or persons found to be damaged by any common carrier subject to the provisions of the act, for a violation thereof. *Laning-Harris Coal and Grain Co. v. St. L. & S. F. R. R. Co.* 37 (39).

Commission no authority to award on account of loss and damage resulting from wrong terminal delivery of shipment of perishable fruit. Damages may be awarded by the Commission only for a violation of some provision of the act. *Blume & Co. v. Wells, Fargo & Co.* 53.

Charges paid July 11, 1906. Complaint filed July 11, 1908. Claim for reparation barred, the cause of action having accrued more than two years prior to the time of filing complaint. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443.

Where Commission finds published rate to have been unreasonable, it may award reparation by the difference between what was exacted and what should reasonably have been paid. *American Refractories Co. v. E. J. & E. R. R. Co.* 480.

## REPARATION—Continued.

When this Commission reduces a rate and prescribes what will be the just and reasonable rate, it does not necessarily follow that for any length of time prior to the date of opinion reparation will be awarded on the basis of the rate prescribed. *Morse Produce Co. v. C. M. & St. P. Ry. Co.* 334 (338).

Power of Commission ample to declare rates and rules set forth in tariff schedules unjust or unreasonable \* \* \* and when rate has been found unreasonable, and reasonable rate has been established, to make reparation. *Morse Produce Co. v. C. M. & St. P. Ry. Co.* 334 (337).

When the Commission has stated a general rule in regard to reparation, the fact that a particular shipper has refused to comply promptly with his lawful duty should not place him in a more advantageous position than the shipper who has complied with the law. *Cambria Steel Co. v. B. & O. R. R. Co.* 484 (486).

Complainant supposed that through rate was materially greater than sum of locals, but since fact appears to be otherwise, it is assumed an order of reparation for 18 cents is not desired. *Bregman & Co. v. Pa. Co.* 478.

Before the Commission makes an order for reparation or establishes a rate for the future it must have some opinion of its own upon the reasonableness of the rate involved. *Holley Matthews Manufacturing Co. v. Y. & M. V. R. R. Co.* 436 (437).

On shipment of plaster from Grand Rapids, Mich., to Houghton, Mich., via Milwaukee, on account of nonconcurrence in published and quoted rate. *Grand Rapids Plaster Co. v. P. M. R. R. Co.* 68.

In *Morse Produce Co.*, 15 I. C. C. 334, the power to award reparation where the rate charged was in accordance with the tariff was considered. *Farley & Loetscher Manufacturing Co. v. C. M. & St. P. Ry. Co.* 602 (603).

Can not be awarded because a carrier has ceased to grant an unpublished privilege, which amounted to nothing less than a departure from the legal tariff. *National Lumber Co. v. S. P. L. A. & S. L. R. R. Co.* 434.

Cattle, Ontario, Oreg., and Nampa, Idaho, to Tacoma, Wash., on account of unnecessary diversion in transit effected without the knowledge or consent of the shippers. *Carstens Packing Co. v. O. R. & N. Co.* 482.

The fact that complainant's petition asks damages in the sum of \$1,500 does not prejudice his right to recover on all the shipments, even though the aggregate amount of such recovery is greater than the sum claimed. *Nollenberger v. M. P. Ry. Co.* 595 (598).

This being primarily an application for reparation, Commission could make no order awarding damages in the absence of proof on the part of complainant of the extent of his injury. *Taylor v. M. P. Ry. Co.* 165.

Reparation will be granted upon the basis of the rates here established; but order for same deferred, awaiting adjustment of the matter between parties. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305.

Reparation awarded to complainants for excessive amount collected on their shipment of emigrant outfit, plus whatever amount was collected by sale for demurrage or warehousing. *Porter v. St. L. & S. F. R. R. Co.* 1.

A stipulation providing for compromise settlement is approved, it appearing that the same contains no provisions inconsistent with law. *Joice & Co. v. Ill. Cent. R. R. Co.* 239.

In all matters which concern rates, is reduced to the simplicity of a mathematical calculation. In matters of discrimination the services of a jury may be necessary. *Washer Grain Co. v. Mo. P. Ry. Co.* 147.

Reconsignment charge reduced, and damages awarded on shipments of coal made. *Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 546.

## REPARATION—Continued.

Car of greater capacity than required furnished, resulting in application of higher minimum. *General Chemical Co. v. N. & W. Ry. Co.* 349.

Power of Commission to award damages is limited to such cases as arise out of violation of the Act. *Woodward & Dickerson v. L. & N. R. R. Co.* 170 (172).

An act of negligence which deprives shipper of enjoyment of unlawful privilege can not be made basis of claim. *Folmer & Co. v. G. N. Ry. Co.* 33.

Cannel coal, under previous decision of Commission, compromise approved. *Goff-Kirby Coal Co. v. B. & L. E. R. R. Co.* 553.

## Allowances:

*Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90.

*Washer Grain Co. v. M. P. Ry. Co.* 147.

## Car stakes:

*Duluth Log Co. v. Minn. & Int. Ry. Co.* 192, 627.

## Misrouting:

*Duluth Log Co. v. Minn. & Int. Ry. Co.* 192, 627.

*Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219.

*Woodward & Dickerson v. L. & N. R. R. Co.* 170.

## Overcharge:

*Bowman-Krantz Lumber Co. v. C. M. & St. P. Ry. Co.* 277.

*Carstens Packing Co. v. N. P. Ry. Co.* 431.

*Carstens Packing Co. v. B. A. & P. Ry. Co.* 432.

*General Chemical Co. v. N. & W. Ry. Co.* 349.

*Grand Rapids Plaster Co. v. P. M. R. R. Co.* 68.

*Keich Mfg. Co. v. St. L. & S. F. R. R. Co.* 230.

*Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37.

*Place v. T. P. & W. Ry. Co.* 543.

*Salomon Bros. & Co. v. N. O. & N. E. R. R. Co.* 332.

## Unreasonable rate:

*Advance Thresher Co. v. O. & N. W. R. R. Co.* 599.

*American Cigar Co. v. C. M. & St. P. Ry. Co.* 618.

*American Refractories Co. v. E. J. & E. R. R. Co.* 480.

*Barrett Mfg. Co. v. L. & N. R. R. Co.* 196.

*Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 274.

*Bennett v. M. St. P. & S. S. M. Ry. Co.* 301.

*Cedar Hill Coal & Coke Co. v. Colo. & So. Ry. Co.* 546.

*Central Commercial Co. v. M. J. & K. C. R. R. Co.* 25.

*Channon Co. v. L. S. & M. S. Ry. Co.* 551.

*Cooper & Son v. C. B. & Q. R. R. Co.* 324.

*Darbyshire-Harvie etc. Co. v. E. P. & S. W. R. R. Co.* 451.

*Farley & Loetscher Mfg. Co. v. C. M. & St. P. Ry. Co.* 602.

*Godfrey & Son v. T. A. & L. Ry. Co.* 65.

*Goff-Kirby Coal Co. v. B. & L. E. R. R. Co.* 553.

*Hartman Furniture Co. v. Wis. Cent. Ry. Co.* 530.

*Holley Matthews Mfg. Co. v. Y. & M. V. R. R. Co.* 436.

*Jones & Sons Co. v. B. & A. R. R. Co.* 226.

*Lindsay Bros. v. Mich. Cent. R. R. Co.* 40.

*Lindsay Bros. v. L. S. & M. S. Ry. Co.* 284.

*MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329.

*Michigan Buggy Co. v. G. R. & I. Ry. Co.* 297.

*Milwaukee Electric Ry. & L. Co. v. C. M. & St. P. Ry. Co.* 468.

*Mountain Ice Co. v. D. L. & W. R. R. Co.* 305.

*Nollenberger v. M. P. Ry. Co.* 595.

*North Bros. v. C. M. & St. P. Ry. Co.* 70.

## REPARATION—Continued.

## Unreasonable rate—Continued.

- Parlin & Orendorff Co. v. St. L. I. M. & S. Ry. Co. 145.  
 Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co. 326.  
 Porter v. St. L. & S. R. R. Co. 1.  
 Red Wing Linseed Co. v. C. M. & St. P. Ry. Co. 47.  
 Rosenbaum Grain Co. v. M. K. & T. Ry. Co. 499.  
 Thomas v. C. M. & St. P. Ry. Co. 584.  
 United States v. N. Y. P. & N. R. R. Co. 233.  
 Williamson v. O. S. L. R. R. Co. 228.

## RETROACTIVE.

- It may be necessary to change from time to time these rulings of the Commission, but they should never be changed except upon due notice to the public, and it would be altogether intolerable if the change could be made retroactive.  
 Nebraska-Iowa Grain Co. v. U. P. R. R. Co. 90 (93).  
 Commission's rule *In the Matter of Demurrage Charges on Privately Owned Tank Cars* is not retroactive. Cambria Steel Co. v. B. & O. R. R. Co. 484.  
 Transit privileges can not be given a retroactive effect. National Lumber Co. v. S. P. L. A. & S. L. R. R. Co. 434.

## RETURN.

- Of empty cream cans. Fairmont Creamery Co. v. Pacific Express Co. 134.

## RETURN OF EMPTIES.

- The provision in the tariffs requiring a return to defendant of the car within forty-eight hours as a condition precedent to the payment of an allowance is unjust, unreasonable and unduly discriminatory. Nebraska-Iowa Grain Co. v. U. P. R. R. Co. 90.

## REVENUES. See also EARNINGS.

- An increase in the cost of labor and materials accompanied by a decrease in the net revenues of the carrier, is not necessarily inconsistent with the possibility that its net earnings may still suffice to afford it a fair return on the investment without an increase in its rate schedules. Shippers' & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co. 264.

- A shipper is entitled to rates that are reasonable, not when tested by the fact that carrier may earn larger revenues by hauling to a point that he does not desire to reach, but in accordance with the usual and ordinary tests. Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co. 460 (465).

- Can it be said that every ton of ice shall pay as much toward a return to the holders of the property as does a ton of silk? The tariffs of this defendant are constructed, and ought to be constructed, upon an entirely different theory. Mountain Ice Co. v. D. L. & W. R. R. Co. 305 (319).

- We are bound to consider whether any contemplated readjustment will result in serious impairment of business investments or undue depreciation in the revenues of the carrier. Black Mountain Coal Land Co. v. So. Ry. Co. 286 (295).

- The Commission can only act upon those rates specifically called to its attention, although it must have in mind the effect upon the revenues of these companies of resulting reductions upon other commodities and at other points. City of Spokane v. N. P. Ry. Co. 376.

- Not within authority or power of Commission to remove discrimination except through reduction in rates, which necessarily operates to reduce revenues. Kindel v. N. Y. N. H. & H. R. R. Co. 555 (560).

- At Bristol Ferry, R. I., last year, insufficient to pay salary of agent. Phillips v. N. Y. & B. Desp. Ex. Co. 631 (636).

## RICE. See COMMODITIES.

**RIGHT OF WAY.**

The importance of the question whether a railway shall be allowed to earn a return upon the unearned increment represented in the value of its right of way is illustrated by the facts in this case, but is not discussed or decided. *City of Spokane v. N. P. Ry. Co.* 376.

**RISK.**

Storage in express offices of intoxicating liquors. *Royal Brewing Co. v. Adams Express Co.* 255 (257).

In shipment of money. *American Bankers' Assn. v. American Express Co.* 15 (19).

**ROSIN.** See **COMMODITIES.****ROUTES.**

It can not be said that moving grain over shorter routes which gives the long haul to the carriers upon whose lines it originates unjustly discriminates against Kansas City. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491 (498).

Lower rate between same points via different route is alone insufficient to establish that the rate in question is unreasonable. *Palmer & Miller v. L. E. & W. R. R. Co.* 107.

**ROUTING.** See also **MISROUTING.**

It is the duty of a carrier to transport shipments via the route designated by the consignor, and if this causes additional expense to the shipper the carrier incurs no liability therefor. *Bregman & Co. v. Pa. Co.* 478 (479).

Broom corn, Duncan to Wichita, reconsigned to Seattle, routed via St. Joseph instead of Beatrice, resulting in higher charge; reparation awarded. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219.

Shippers' instructions not obeyed, resulting in assessment of higher charge; diverting carrier must assume responsibility. *Woodward & Dickerson v. L. & N. R. R. Co.* 170.

It was the duty of the initial carrier to obey the specific routing instructions furnished by complainant. *Duluth Log Co. v. Minn. & Int. Ry. Co.* 627.

Specified by shipper. *Commercial Coal Co. v. B. & O. R. R. Co.* 11 (13).

Directed by shipper. *Porter v. St. L. & S. F. R. R. Co.* 1 (2).

Specified in bill of lading; agent failed to note on billing. *Folmer & Co. v. G. N. Ry. Co.* 33 (34).

**RULES.**

It is well settled that carriers have the right to transport certain commodities under reasonable rules and regulations respecting their receipt, carriage, and delivery. *National Petroleum Assn. v. L. & N. R. R. Co.* 473 (476).

**RYE.** See **COMMODITIES.****SALE.**

Property sold to pay freight charges, demurrage, and other expenses upon refusal of consignee to pay. *Porter v. St. L. & S. F. R. R. Co.* 1 (2).

**SALUTING POWDER.** See **COMMODITIES.****SAUCES.** See **COMMODITIES.****SAWS.** See **COMMODITIES.****SAWMILL MACHINERY.** See **COMMODITIES.****SCALAGE DEDUCTIONS.**

On the published tariff estimates, when the grain is delivered out of the elevator, are not exacting from grain shippers a rate. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341.

**SCALE RATES.** See also **PERCENTAGE RATES.**

Cream and milk to Chicago between Detroit and Port Huron upon the east and Colorado common points upon the west. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109.

**SCOOPS.** See **COMMODITIES.****SCOURING COMPOUNDS.** See **COMMODITIES.****SCRAP IRON.** See **COMMODITIES.****SCREEN DOORS.** See **COMMODITIES.****SEASON.**

While ordinarily a crop of ice can be harvested upon the Hudson, seasons occur frequently when weather is not sufficiently cold to permit this. The crop at Mountain points never fails. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (310).

**SECOND-HAND.**

Automobile, rate same as new. *Whitcomb v. C. & N. W. Ry. Co.* 27.

**SECTION 1.**

Considered. *In re Jurisdiction Over Water Carriers*, 205 (206).

**SECTION 3.**

That Congress did not see fit to alter this section is highly persuasive that it was the intention of that body to leave the law and its practical working exactly as it has been. *City of Spokane v. N. P. Ry. Co.* 376 (388).

Not violated by refusal of express company to accept c. o. d. shipments of intoxicating liquor. *Royal Brewing Co. v. Adams Express Co.* 255 (258).

**SECTION 4.** See also **LONG AND SHORT HAUL.**

That Congress did not see fit to alter this section is highly persuasive that it was the intention of that body to leave the law and its practical working exactly as it has been. *City of Spokane v. N. P. Ry. Co.* 376 (388).

*MacGillis & Gibbs Co. v. C. M. & St. P. Co.* 329.

**SECTION 6.**

The holding, storing, unloading, and reloading of shingles was such a privilege that required publication to be lawful. *Folmer & Co. v. G. N. Ry. Co.* 33.

**SECTION 8.**

Restricts Commission's authority to award damages to cases in which the carrier may be liable under the act only. *Blume & Co. v. Wells, Fargo & Co.* 53 (55).

Jurisdiction of Commission to award damages considered. *Washer Grain Co. v. M. P. Ry. Co.* 147 (151).

**SECTION 9.**

Considered. *Blume & Co. v. Wells, Fargo & Co.* 53 (55).

*Washer Grain Co. v. M. P. Ry. Co.* 147 (152)

**SECTION 10.**

The Commission, as an administrative body having quasi judicial powers, has no authority whatever, as the section is directed solely to court procedure. *Washer Grain Co. v. M. P. Ry. Co.* 147 (153).

**SECTION 13.**

Complaints may be filed even where there is no direct damage to the complainant.

*Washer Grain Co. v. M. P. Ry. Co.* 147 (153).

**SECTION 14.**

Clearly contemplates awards of money damages made by the Commission. *Washer Grain Co. v. M. P. Ry. Co.* 147 (153).

## SECTION 15.

Clearly contemplates awards of money damages made by the Commission. *Washer Grain Co. v. M. P. Ry. Co.* 147 (153).

Establishing through routes to Milwaukee. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460, 465.

## SECTION 16.

Does not specify manner of presentation of complaints to Commission. *Venus v. St. L. I. M. & S. Ry. Co.* 136 (137).

Quoted and considered. *Washer Grain Co. v. M. P. Ry. Co.* 147 (153).

Considered. *Blume & Co. v. Wells, Fargo & Co.* 53 (55).

SET-OFF. See OFFSET.

SEWING MACHINE STAND CASTINGS. See COMMODITIES.

SHINGLES. See COMMODITIES.

## SHIPSIDE RATES.

Bananas, imported, through New Orleans to El Paso, Tex. *Payne v. M. L. & T. R. R. & S. S. Co.* 185.

SHOES AND BOOTS. See COMMODITIES.

SHORT LINE. See also ROUTES.

What might perhaps have been proper as between companies operating separate and distinct short lines may become unreasonable and unjust when both are absorbed by a large system which serves an extensive territory. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (292).

Rate by, no comparison with higher rate between same points over longer route of two lines. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

SHOVELS. See COMMODITIES.

## SHRINKAGE.

Scalage deductions made on account of loss of weight of grain during elevation. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341.

Ice, in transit. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (313).

SIZE OF CAR. See CAR SIZE.

SKYLIGHT GLASS. See COMMODITIES.

SOAP. See COMMODITIES.

SPADES. See COMMODITIES.

## SPECIAL SERVICE.

The service rendered by defendants in the movement of this traffic may properly be styled a "special" service; but it is not in any proper sense an "expedited" service, nor is it an expensive service. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305.

Contract between shipper and carrier to make up extra train and charge above tariff rate for special service; reparation of extra charge ordered. *Carstens Packing Co. v. B. A. & P. Ry. Co.* 432.

Cream, Burlington Route furnishes. *Beatrice Creamery Co. v. Ill. Cent. R. R. Co.* 109 (129).

SPIRITUOUS LIQUORS. See COMMODITIES (Liquors).

STAKES. See COMMODITIES.

## STANDARD OIL COMPANY.

Rates fixed by Missouri Railroad Commission give practical monopoly of oil business at Boonville and Holden, Mo., to Standard Oil refinery at Sugar Creek. *Paola Refining Co. v. M. K. & T. Ry. Co.* 29 (31).



## STARE DECISIS.

Complaint alleges that rate adjustment established by defendants, under and in accord with Commission's decision in *Farmers, Merchants & Shippers' Club of Kansas v. A. T. & S. F. Ry. Co. et al.*, 12 I. C. C. Rep., 351, is unjust and unduly discriminates against the Kansas City market. The principles of that decision are reaffirmed. Complaint dismissed. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491.

This Commission can not, without stultifying itself, make any ruling which will condemn as unlawful the payment of these elevation allowances during the time they have been expressly sanctioned by its decisions. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90.

Reasonableness, *per se*, of banana rates from New Orleans to El Paso, in line with rates approved by Commission in another case. *Payne v. M. L. & T. R. R. & S. S. Co.* 185 (191).

Commission has had under consideration in a previous case part of the subject-matter of this complaint. *Pilant v. A. T. & S. F. Ry. Co.* 178 (179).

## STATE COMMISSION.

No greater sanctity can be presumed in respect of rates established by a state railroad commission than of those voluntarily established by carriers. *Paola Refining Co. v. M. K. & T. Ry. Co.* 29.

Charges for switching on intrastate business compared with those for same service on interstate business, and the latter found unreasonable. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443 (446).

Requires intrastate movement of vehicles to be at same rate as agricultural implements. *Parlin & Orendorff v. St. L. I. M. & S. Ry. Co.* 145 (146).

Established rates on petroleum in Kansas upon distance basis. *Hafey v. St. L. & S. F. R. R. Co.* 245 (246).

Louisiana, controls steamship lines. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (538).

## STATE RATE.

The fact that it (a rate) does not cross a state line is no reason why it may not be considered when an interstate rate over the same line and for substantially the same distance is under examination. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453 (459).

The rate in both Kansas and Nebraska for distances approximating 280 miles is between 12 and 13 cents per 100 lbs. *Cooper & Son v. C. B. & Q. R. R. Co.* 324 (325).

Established by state authority may be valuable for purpose of comparison, not conclusive of unreasonableness of relative higher interstate rate. *Hafey v. St. L. & S. F. R. R. Co.* 245 (246).

Initial carrier's interstate rate higher than state rate; former reduced to latter and reparation awarded. *American Cigar Co. v. C. M. & St. P. Ry. Co.* 618.

Combination of local state rate plus independent interstate rate not conclusive as to the reasonableness of a through interstate rate. *Marble Falls Insulator Pin Co. v. H. & T. C. R. R. Co.* 167.

One of the locals is a compulsory intrastate rate and the other is a voluntary rate of the defendants. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (601).

## STATION.

Where office of a carrier located, or what hours kept open, hardly seem to be within jurisdiction of this Commission. *American Bankers' Assn. v. American Express Co.* 15 (22).

## STATUTE OF LIMITATIONS. See LIMITATION.

## STEAM COAL. See COMMODITIES.

STEAMSHIP LINES. See WATER LINES.

STEEL ARTICLES AND TANKS. See COMMODITIES.

STIPULATION. See PRACTICE.

STOCK.

Neither can the capital stock of the Great Northern Railway Company be reduced for the purpose of determining what its fair earnings should be by the amount of that stock which was originally issued without money consideration. *City of Spokane v. N. P. Ry. Co.* 376.

STONE. See COMMODITIES.

STOP OVER.

If carriers maintain through passenger fares made up of the sums of locals they should use the lowest local available, especially when the higher local includes privileges not directly pertaining to the transportation and of which the through passenger does not care to avail himself. *United States v. B. & O. R. R. Co.* 470 (472).

STOPPAGE IN TRANSIT.

The privilege of stoppage in transit at the through rate is not the only method by which competing points may be equalized. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370 (375).

STORAGE. See also DEMURRAGE.

Intoxicating liquors, in express offices, demoralizing effect upon employees. *Royal Brewing Co. v. Adams Express Co.* 255 (257).

Defendant's charges for the storage of brewers' rice at New Orleans, La., are not unreasonable or unjust. *Gough & Co. v. Ill. Cent. R. R. Co.* 280.

STORAGE IN TRANSIT.

Reconsigned at balance of through rate. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219.

STORE-DOOR DELIVERY.

At Fall River, not at Bristol Ferry, R. I.; circumstances justify discrimination. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631 (634).

STOVES. See COMMODITIES.

STRONG LINE.

In establishing a reasonable rate the strongest line should not alone be considered; the necessities of the weaker line must also be taken into account. *City of Spokane v. N. P. Ry. Co.* 376 (415).

STRUCTURAL IRON AND STEEL. See COMMODITIES.

SUBPÆNA.

Duces tecum, motion for, denied. *American Bankers' Assn. v. American Express Co.* 15.

SUGAR. See COMMODITIES.

SULPHIDE OF IRON. See COMMODITIES.

SURPLUS.

In determining what will be reasonable rates for the future the Commission may properly consider that under the rates in effect a large surplus has been accumulated in the past, but it should not make rates for the purpose of distributing that surplus to the public. *City of Spokane v. N. P. Ry. Co.* 376.

SWEEPINGS. See COMMODITIES (Jewelers' sweepings).

SWITCHING. See also TRANSFER SERVICE.

Defined to include movement of car loaded in one direction and empty in opposite direction; but when loaded car is switched in both directions a charge is made for each movement. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443 (447).

**SWITCHING CHARGE.**

Hay, Kansas City, Mo., absorbed on inbound shipments, when net revenue upon car is \$10 or more. *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37.

Scrap iron, at Chicago, resulting from instructions of consignor; no reparation. *Bregman & Co. v. Pa. Co.* 478.

In El Paso, Tex., on coal from Gallup, N. Mex., is interstate rate. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443.

Two dollars from inspection track to transfer track and \$2 more from transfer track to elevator. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (95).

Industrial to main line, absorption of. *Crane R. R. Co. v. P. & R. Ry. Co.* 248 (251).

**SYSTEM.**

What might perhaps have been proper as between companies operating separate and distinct short lines may become unreasonable and unjust when both are absorbed by a large system which serves an extensive territory. *Black Mountain Coal Land Co. v. So. Ry. Co.* 286 (292).

**TABLE SAUCE.** See **COMMODITIES.**

**TABLETS.** See **COMMODITIES.**

**TAKE-OFF.** See **SCALAGE DEDUCTIONS.**

**TANKS, STEEL.** See **COMMODITIES.**

**TARIFF.**

The privilege embodied in a separate storage and reconsignment tariff issued by one carrier can not be availed of under a joint tariff to which that carrier and two others are named as parties, unless the tariff by express reference to the former so provides. *Washington Broom & Woodenware Co. v. C. R. I. & P. Ry. Co.* 219.

Carriers and shippers must take specific rates and fares provided in tariffs, regardless of any long and short haul clauses, maxima rules, alternative rate or fare provisions, etc., contained in tariffs. *Williamson v. O. S. L. R. R. Co.* 228 (229).

Reconsigning rules required to be signed by shipper and subject to cancellation at the option of the carrier are inconsistent with the law governing the establishment and modification of tariff schedules. *Kile & Morgan Co. v. Deepwater Ry. Co.* 235.

It is contended by complainant that it had no knowledge of what the charges were to be. This we can not assume to be so for the reason that the charges were duly published in the tariffs of the defendant. *Gough & Co. v. Ill. Cent. R. R. Co.* 280 (282).

Carriers are required by law to charge their published rate, and when they do so, unless the rate published is unreasonable and thereby unlawful, they entail no liability. *Palmer & Miller v. L. E. & W. R. R. Co.* 107 (108).

A rate or a tariff published and filed with the Commission can not be held to be legal merely because of that fact; it must also be plain and intelligible. *Porter v. St. L. & S. F. R. R. Co.* 1 (4).

As practice of making scalage deductions is not a matter of rates, we see no reason why the amount of the weight deductions should be published in tariffs. *Baltimore Chamber of Commerce v. Pa. R. R. Co.* 341 (347).

A carrier's own published tariffs are the measure of its obligations to shippers; it can not be controlled by the terms of the separate tariffs of its connections. *Falls & Co. v. C. R. I. & P. Ry. Co.* 269.

Tariffs reading "between" are always understood to apply in either direction. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (600).

Carelessly worded items in tariff offer opportunity to misconstrue the application of the tariff. *Payne v. M. L. & T. R. R. & S. S. Co.* 185 (188).

Can not be varied from, even though it may for the interest in a particular case both of shipper and railway that they should be. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (98).

**TARIFF—Continued.**

As against the carrier, its published tariff rate is conclusive of the fact that any higher rate is unreasonable. *Laning Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37 (39).

Whatever may have been the practice in the past of "meeting the rate," tariffs must now be adhered to. *Menefee Lumber Co. v. T. & P. Ry. Co.* 49.

May provide for waiver of demurrage when cars are bunched in transit. *American Creosoting Works v. Ill. Cent. R. R. Co.* 160.

Did not contain provision for in-transit privilege which was arranged for. *Folmer & Co. v. G. N. Ry. Co.* 33.

**TAX.**

The levying of tolls by a railway for its transportation service is in essence the imposing of a tax upon the public which requires that service. *City of Spokane v. N. P. Ry. Co.* 376 (413).

**TEHUANTEPEC ROUTE.**

Effect on transcontinental rates of competition created by use of. *City of Spokane v. N. P. Ry. Co.* 376 (385).

**TELEGRAPH POLES.** See **COMMODITIES (Poles).**

**TENT PINS.** See **COMMODITIES.**

**TERMINAL COST.**

Method of determining terminal expense per car, "which is merely an average obtained by dividing the total terminal cost, including a proportion of these fixed charges, by the total number of cars handled," disapproved. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (319).

Rates made up on combination on a closely adhered to basing line must be made with regard to the cost of the terminal services, which is necessarily high. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (558).

**TERMINAL EXPENSES.**

It can not be doubted that terminal expenses in a great center like Kansas City are greater than in a smaller place where terminal work can be done more expeditiously and economically. *Kansas City Transportation Bureau v. A. T. & S. F. Ry. Co.* 491 (493).

**THRESHING MACHINES.** See **COMMODITIES.**

**THROUGH AND LOCAL.**

Complainant made shipments of boilers from Kalamazoo, Mich., to New Glarus, South Wayne, Monticello, and Monroe, Wis., upon which rates exceeded the combination of locals: *Held*, That the through joint rates at the time of shipments were unjust and unreasonable to the extent that they exceeded the combination of locals. *Lindsay Bros. v. Mich. Cent. R. R. Co.* 40.

Complainant made shipments of engines and boilers from Kalamazoo, Mich., via Chicago, one to Woodford and the other to Argyle, Wis., on which defendant collected rates that exceeded the combination of locals: *Held*, That the joint through rates were unjust and unreasonable to the extent that they exceeded the combination of locals. *Lindsay Bros. v. C. R. I. & P. Ry. Co.* 182.

Complainant made shipments of cattle, Nampa, Idaho, to Tacoma, Wash., but in order to combine these cars with others instructed that the shipments go forward on combination rates based on Ontario, Oreg. This combination was higher than the through rate: *Held*, That under these circumstances the Commission has no authority to grant relief. *Carstens Packing Co. v. O. S. L. R. R. Co.* 429.

Rate charged by defendants on complainants' shipment of emigrant outfit from Fletcher, Okla., to Bovina, Tex., of 68 cents per 100 pounds found unreasonable to the extent that it exceeds the combination of locals of 41 cents per 100 pounds now applying over the route the shipment moved. *Porter v. St. L. & S. F. R. Co.* 1.

## THROUGH AND LOCAL—Continued.

Complainant alleged that through rate on lumber, Warsaw, N. C., to Chappaqua, N. Y., was unreasonable, because it exceeded combination of locals on New York: *Held*. The record does not disclose a typical through rate in excess of combination of locals. *Harlow Lumber Co. v. A. C. L. R. R. Co.* 501.

One of the locals is a compulsory intrastate rate and the other is a voluntary rate of the carriers. We do not now determine that a joint through rate exceeding the combination of a compulsory and a voluntary rate is necessarily unreasonable. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (601).

Circumstances can rarely exist which would justify charging a passenger more for a through ride between two points than the combination of locals between the same points, where the locals have been voluntarily established. *United States v. B. & O. R. R. Co.* 470 (471).

If carriers participating in a joint through rate desire to reduce or increase the separately established local rates via the same route, the order of the Commission requiring the maintenance of a joint through rate is no bar to their doing so. *Michigan Buggy Co. v. G. R. & I. Ry. Co.* 297 (299).

Complainant supposed through rate on scrap iron, Freeport, Ill., to Wheatland, Pa., via Chicago, was materially greater than the sum of the locals, but the fact appears to be otherwise. *Bregman & Co. v. Pa. Co.* 478.

Joint through rates on shipments of steel tanks from Goshen, Ind., to Sullivan and Sheboygan, Wis., were excessive and ought not to have exceeded the present combination of locals. *Lindsay Bros. v. L. S. & M. S. Ry. Co.* 284.

The rate for a long through haul should ordinarily be less than combination of two or more local rates that are included within that distance over the same lines. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (558).

Reasonableness of through rate can not be determined by a comparison with a local intrastate rate plus an independent interstate rate. *Marble Falls Insulator Pin Co. v. H. & T. C. R. R. Co.* 167.

Greenville, Miss., to Cedar Rapids, Iowa, through rate on cottonwood box shooks reduced. *Holley Matthews Manufacturing Co. v. Y. & M. V. R. R. Co.* 436.

Vegetables, Green Bay, Wis., to Pattonsburg, Mo. *Thomas v. C. M. & St. P. Ry. Co.* 584.

## THROUGH RATES. See JOINT RATE.

## THROUGH ROUTES.

A railroad company, having 1.9 miles of track connecting with defendants' tracks, asked for the establishment of through routes and joint rates upon interstate shipments between points on its line and all points on defendants' lines; *Held*, upon all the facts and circumstances, complainant is not entitled to the order sought. *Crane R. R. Co. v. P. & R. Ry. Co.* 248.

The D. & R. G. advanced to the M. P. the full amount of its charges and collected same from consignee. These facts, together with other facts of record, constitute an arrangement which clearly brings the transportation within the scope of the act. *Nollenberger v. M. P. Ry. Co.* 595 (597).

The complainant is entitled to through routes to Milwaukee from points on that part of the C. R. I. & P. Ry. Co. that was formerly the B. C. R. & N. Ry., and to joint through rates on corn, rye, and oats to the Milwaukee market. *Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co.* 460.

Complainant asks for reestablishment of joint or through rates on grain and grain products from all points on the Kansas Southwestern Ry. to all points on the lines of the other defendants. *Midland Mill & Elevator Co. v. Kansas S. W. Ry. Co.* 610.

A common carrier, in order to build up and foster industries on its own lines, can not lawfully refuse to carry the products located on connecting lines. *Standard Lime & Stone Co. v. Cumberland Valley R. R. Co.* 620.

**THROUGH ROUTES—Continued.**

Through routes from wheat-producing fields in Oklahoma to points on Frisco and Cotton Belt through Sherman should be reestablished. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138 (142).

**TIES.** See **COMMODITIES.**

**TIN BOXES.** See **COMMODITIES.**

**TOBACCO.** See **COMMODITIES.**

**TON PER MILE.**

Because the revenue per ton per mile yielded by rates from farther distant points is less than that yielded by rates from a shorter distant point, it does not necessarily follow that the latter is subjected to unjust discrimination. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504 (513).

Other conditions being equal, the rate per ton-mile from this traffic (ice) ought not to equal the average from all sources. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (320).

Not the generally accepted basis in this country for making up interstate rates. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

Stone, increased from 9.33 mills to more than 1 cent. *Shippers & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co.* 264 (268).

Phosphate rock, lower north of Ohio River than south of that river. *Darling & Co. v. B. & O. R. R. Co.* 79 (83).

Emigrant outfit, Fletcher, Okla., to Bovina, Tex. *Porter v. St. L. & S. F. R. R. Co.* 1 (6).

Less than 3 mills on coal for 640 miles. *Commercial Coal Co. v. B. & O. R. R. Co.* 11 (13).

Petroleum,  $3\frac{1}{2}$  cents, is somewhat excessive, and reduced. *Hafey v. St. L. & S. F. R. R. Co.* 245 (247).

7 mills for back haul. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138 (141).

**TRADE CENTERS.**

Consideration must be given to advantages of natural location and development in readjusting rates. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (561).

**TRAINLOAD.**

Nothing herein shall be deemed to imply an official sanction of trainload rates, as that question is not before the Commission. *Carstens Packing Co. v. O. S. L. R. R. Co.* 429 (430).

**TRAMP STEAMERS.**

The great bulk of the wheat movement to the seaboard goes through the Lakes on the so-called "tramp" vessels on rates so low that the rail lines make practically no effort to meet them. *Bulte Milling Co. v. C. & A. R. R. Co.* 351 (357).

**TRANSCONTINENTAL PASSENGER ASSOCIATION.**

Clergy Bureau of, restricted issuance of passes to ministers, etc., on account of alleged ruling of Commission. *In re Passes to Clergymen*, etc. 45.

**TRANSCONTINENTAL RATES.**

Lower from Missouri River and east to Pacific Coast than to intermediate interior points; *Held*, This has been forced by water competition at the Pacific Coast. *City of Spokane v. N. P. Ry. Co.* 376.

**TRANSFER SERVICE.**

"No charge made for intermediate service in the way of switch or drayage on freight, carloads or less, consigned to points beyond Chicago on joint through rates or combination of locals." *Lindsay Bros. v. Mich. Cent. R. R. Co.* 40 (41).

**"TRANSPORTATION."**

As used in section 1, considered. *Standard Lime & Stone Co. v. Cumberland Valley R. R. Co.* 620 (623).

**TRANSSHIPMENT.**

Bananas, imported, upon arrival at New Orleans. *Payne v. M. L. & T. R. R. & S. S. Co.* 185.

**TRAVELERS' CHECKS.** See **COMMODITIES** (Money orders).

**TRUSTEE.**

It is impossible to restore what has been improperly taken in the way of excessive rates to those persons from whom it has been received. The Government, under those circumstances, can not lay hold of this surplus as a fund in trust for the public. *City of Spokane v. N. P. Ry. Co.* 376 (416).

**TWINE AND CORDAGE.** See **COMMODITIES**.

**TWO CARS FOR ONE.**

Rule permitting use of two cars at highest minimum weight and lowest rate provided for one car to accommodate shipments of light and bulky articles. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 504.

**TYPEWRITER.** See **COMMODITIES**.

**UNDERCHARGE.**

The Commission is without authority to enter an order requiring a shipper to make good an undercharge, but shippers must understand their liability under the law for the failure or refusal to pay the published rates. *Falls & Co. v. C. R. I. & P. Ry. Co.* 269.

Commission is without authority to adjudicate claim of railroad company against a shipper. *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* 37.

Claim of overcharge and undercharge submitted by agreement. *Gough & Co. v. Ill. Cent. R. R. Co.* 280 (281).

**UNIFORM CLASSIFICATION.**

A committee representing carriers from different classification territories has been engaged for months in the laudable work of preparing a uniform classification for the whole country. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (539).

**UNION PACIFIC R. R. CO.**

Valuation as affecting rates. *Kindel v. N. Y. N. H. & H. R. R. Co.* 555 (563).

**UNLOADING.**

Grain at elevators may be done in from two to six hours after placing of car. *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.* 90 (101).

**UNREASONABLE RATES.**

The Commission is justified in reducing a rate only when, upon consideration of all the facts and circumstances, it is of opinion that the rate in question is unreasonable, unduly discriminatory, or otherwise in violation of the act to regulate commerce. *Paola Refining Co. v. M. K. & T. Ry. Co.* 29.

There is no warrant in law for the maintenance of a rate or rule for the purpose of restricting the movement of a certain class of traffic because it is unattractive to carriers. *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry. Co.* 370 (373).

A rate that so nearly approaches the value of the shipment is suggestive of error or inadvertence in the adjustment of such. *Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 274 (275).

**USE.**

Character of the consignee or the use made of the coal is not a proper or lawful basis for a difference in rates on coal of the same kind. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453 (456).

## VALUE.

The carriers have applied one rate to all machines, and we don't see how it would be possible for them to differentiate between machines of different values and whether old or new, as there would be no place where a definite line could be drawn. *Whitcomb v. C. & N. W. Ry. Co.* 27 (28).

When carrier has established reasonable rate for transportation of a given commodity, it can not be required to change that rate to accord with differing values of same commodity produced by different shippers. *Hafey v. St. L. & S. F. R. R. Co.* 245 (246).

Considering the value of this commodity (cottonwood box shooks) and the incidents of its transportation, no very good reason appears why it might not take as high a rate as lumber. *Holley Matthews Manufacturing Co. v. Y. & M. V. R. R. Co.* 436 (438).

Charges exacted for transporting shipment of plate glass from St. Paul to Douglas, a distance of 587 miles, exceeded by \$9.50 the cost of glass at St. Paul. *Bennett v. M. St. P. & S. S. M. Ry. Co.* 301 (302).

Considering the small value of ice, in connection with the manner in which it is handled, the rates for this business should be among the very lowest. *Mountain Ice Co. v. D. L. & W. R. R. Co.* 305 (320).

Of veneer is such that a few cents per 100 pounds does not control, although it influences, the point of manufacture. *Penrod Walnut & Veneer Co. v. C. B. & Q. R. R. Co.* 326 (327).

A rate that so nearly approaches the value of the shipment is suggestive of error or inadvertence in the adjustment of such. *Beekman Lumber Co. v. St. L. I. M. & S. Ry. Co.* 274 (275).

Increase in value is a circumstance which should be considered in determining the reasonableness of the rate. *Darling & Co. v. B. & O. R. R. Co.* 79 (81).

Rapid-roller letter copiers compared with old-style screw hand press. *Yawman & Erbe Manufacturing Co. v. A. T. & S. F. Ry. Co.* 260 (261).

## VALUATION, GOVERNMENT.

If any importance whatever is to be attached to the cost of reproduction in the establishment of railway rates, the valuation must be undertaken by the Government itself. *City of Spokane v. N. P. Ry. Co.* 376 (403).

## VALUATION, LIMITED. See RELEASED RATES.

## VEGETABLES. See COMMODITIES.

## VEHICLES. See COMMODITIES.

## VENEER, WALNUT. See COMMODITIES.

## VESTED RIGHTS. See also INDUSTRIAL RATES.

Where, upon the strength of a given rate, capital has been invested and industrial conditions have become established, this rate can not be discontinued without taking into account its effect upon these commercial and industrial conditions. *Green Bay Business Men's Assn. v. B. & O. R. R. Co.* 59.

We are bound to consider whether any contemplated readjustment will result in serious impairment of business investments or undue depreciation in the revenues of the carrier. *Black Mountain Land Co. v. So. Ry. Co.* 286 (295).

Rate has been in effect a number of years, and there can be no doubt that complainant has made its contracts with the public on that basis. *Pilant v. A., T. & S. F. Ry. Co.* 178 (181).

## VINEGAR. See COMMODITIES.

## VOLUME. See also DENSITY.

A commodity that moves in as large volume as grain is more or less sensitive to small fluctuations and differences in rates. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341 (347).



## VOLUME—Continued.

Switching for another shipper much larger than that done for complainant, and, hence, it can be done at less cost per car. *West Texas Fuel Co. v. T. & P. Ry. Co.* 443 (447).

## VOLUNTARY.

When unjust discrimination against one point in favor of another is alleged, it must be shown that the circumstances and conditions at each of the points are substantially similar, and that the lower rates at the one point were the result of the voluntary action of the carriers at that point. *Bainbridge Board of Trade v. L. & St. L. Ry. Co.* 586 (593).

Having voluntarily made a common rate on wheat and barley to Milwaukee and Chicago, we can not disregard the force of that action as evidence by which to measure the justice of the complainant's proposal that common rates should also be made to those points on corn, rye, and oats. *Chamber of Commerce of Milwaukee v. C., R. I. & P. Ry. Co.* 460 (466).

The fact that it (a rate) does not cross a state line is no reason why, being practically a voluntary rate, it may not be considered when an interstate rate over the same line and for substantially the same distance is under examination. *Board of Mayor & Aldermen v. V. & S. W. Ry. Co.* 453 (459).

Failure of roads to accord promised rates to jobbers of Spokane led to boycott, the outcome being an understanding that Spokane was to be accorded a certain defined territory. *City of Spokane v. N. P. Ry. Co.* 376 (390).

Circumstances can rarely exist which would justify charging a passenger more for a through ride between two points than the combination of locals between the same points, where the locals have been voluntarily established. *United States v. B. & O. R. R. Co.* 470 (471).

The defendants may voluntarily publish a free back haul or a merely nominal rate for the extra service. *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.* 138 (141).

No greater sanctity can be presumed in respect of rates established by a state railroad commission than those voluntarily established by carriers. *Paola Refining Co. v. M. K. & T. Ry. Co.* 29.

One of the locals is a compulsory intrastate rate and the other is a voluntary rate of the carriers. *Advance Thresher Co. v. O. & N. W. R. R. Co.* 599 (601).

Carriers may voluntarily make rates lower than they may lawfully be required to make. *Commercial Coal Co. v. B. & O. R. R. Co.* 11.

A carrier may voluntarily make, under the force of controlling competition, rates which it might not be required to make. *Indianapolis Freight Bureau v. P. R. R. Co.* 567 (576).

WAGONS. See **COMMODITIES**.

## WAGON HAUL.

Competition of, in transportation of cotton into Memphis. *Barton, Reisinger, Davis Co. v. St. L. I. M. & S. Ry. Co.* 222 (224).

Free service at one point, not at another, alleged discrimination. *Phillips v. N. Y. & B. Dep. Ex. Co.* 631 (634).

WALNUT VENEER. See **COMMODITIES**.

## WAREHOUSING.

Reparation awarded for excessive amount collected on shipment, plus whatever amount was collected by sale for demurrage or warehousing. *Porter v. St. L. & S. F. R. R. Co.* 1.

Storage of brewers' rice at New Orleans. *Gough & Co. v. Ill. Cent. R. R. Co.* 280.

WASHING COMPOUNDS. See **COMMODITIES**.

WASHOUT. See **FLOOD**.

**WATER CARRIERS.**

Carriers of interstate commerce by water are subject to the act to regulate commerce only in respect of traffic transported under a common control, management, or arrangement with a rail carrier, and in respect of traffic not so transported they are exempt from its provisions. *In re Jurisdiction Over Water Carriers*, 205.

In Louisiana under control of state commission. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534 (538).

**WATER COMPETITION.**

A water port is entitled to whatever advantage it can obtain through transportation by water, but its location does not entitle it to lower rates by rail, and although such preference may lawfully be accorded by a carrier in the protection of its own interests it should not be required except in case where manifest wrong would otherwise result. *Darling & Co. v. B. & O. R. R. Co.* 79 (87).

Carriers can not be required to meet water competition; they do it of their own volition, or whenever the same is potent enough to compel them to do so in order to secure the traffic. *Bainbridge Board of Trade v. L. H. & St. L. Ry. Co.* 586 (594).

Rates from St. Louis and points basing thereon to New Orleans and other Mississippi River points are controlled by water competition, and, therefore, the fact that such rates are lower than rates from the same points of origin to Monroe does not unjustly discriminate against Monroe. *Monroe Progressive League v. St. L. I. M. & S. Ry. Co.* 534.

Where a water competition exists that takes a portion of the tonnage and could prepare to take it all, the rail line may adjust its rates so as to fight for the whole tonnage the moment it feels the effect of its competitor's rates. *Bulte Milling Co. v. C. & A. R. R. Co.* 351.

At Milwaukee justifies lower through rate on cross-ties from Sault Ste. Marie, Mich., than to Thiensville, an intermediate point. *MacGillis & Gibbs Co. v. C. M. & St. P. Ry. Co.* 329 (330).

At Pacific Coast on transcontinental traffic creates a dissimilarity of circumstances and conditions between the interior and the coast. *City of Spokane v. N. P. Ry. Co.* 376.

From New Orleans to St. Louis and Ohio River crossings affecting rates on sugar and coffee from Atlantic seaboard. *Indianapolis Freight Bureau v. P. R. R. Co.* 567.

**WEAK LINE.**

In establishing a reasonable rate the strongest line should not alone be considered; the necessities of the weaker line should also be taken into account. *City of Spokane v. N. P. Ry. Co.* 376 (415).

**WEIGHT. See also MINIMUM WEIGHT.**

Package of plate glass capable of being loaded into a box car should not have assessed against it an estimated weight, but should be transported at actual weight. *Bennett v. M. St. P. & S. Ste. Marie Ry. Co.* 301 (303).

Scalage deductions from grain during elevation. *Baltimore Chamber of Commerce v. P. R. R. Co.* 341.

**WHEAT. See COMMODITIES.****WHEELBARROWS. See COMMODITIES.****WINDMILLS. See COMMODITIES.****WINDOW GLASS. See COMMODITIES.****WIRE. See COMMODITIES.****WIRE MATTRESSES. See COMMODITIES.****WOOD. See COMMODITIES (Emigrants' movables).****WOODEN HANDLES. See COMMODITIES.**

**WOODENWARE.** See **COMMODITIES.**

**YARDING-IN-TRANSIT.**

Lumber, San Pedro to Los Angeles, reshipped to other destinations. *National Lumber Co. v. S. P. L. A. & S. L. R. R. Co.* 434.

**YELLOW PINE.** See **COMMODITIES.**

**YELLOW PINE CASES.**

Reparation awarded by compromise. *Joice & Co. v. Ill. Cent. R. R. Co.* 239.

**ZONE RATES.**

Express business from Boston. *Phillips v. N. Y. & B. Desp. Ex. Co.* 631 (632).

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